TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 316. 127.

THE UNITED STATES, APPELLANT,

vs.

BYRON BARLOW, JAMES E. BLACKWELL, AND JAMES M. DOUGAN, PARTNERS AS BYRON BARLOW & CO.

No. 376. 128

BYRON BARLOW, JAMES E. BLACKWELL, AND JAMES M. DOUGAN, PARTNERS AS BYRON BARLOW & CO., APPELLANTS,

vs.

THE UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

FILED AUGUST 4, 1900.
(17861 and 17862.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 376.

THE UNITED STATES, APPELLANT,

vs.

BYRON BARLOW, JAMES E. BLACKWELL, AND JAMES M. DOUGAN, PARTNERS AS BYRON, BARLOW & CO.

No. 377.

BYRON BARLOW, JAMES E. BLACKWELL, AND JAMES M. DOUGAN, PARTNERS AS BYRON, BARLOW & CO., APPELLANTS,

vs.

THE UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

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1 I. *Communication from the Secretary of the Treasury referring claim.*—Filed February 20, 1896.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 19, 1896.

The Honorable the Chief Justice and Judges of the Court of Claims:

Pursuant to the provisions of section 2 of the act of March 3, 1883 (22 Stat., 485—the Bowman Act), and as requested by the Comptroller of the Treasury in his letter of the 15th instant, I have the honor to transmit herewith the claim of Byron Barlow & Co. for extra work in connection with the dry dock at Puget Sound Naval Station, amounting to $1,156.76, which was disallowed by the Auditor for the Navy Department on January 12, 1895, and transmitted to the Comptroller of the Treasury, at the request of the Secretary of the Navy, for a revision of the Auditor's settlement, as provided by section 8 of the act of July 31, 1894 (28 Stat., 207).

The Comptroller says, "the principal questions at issue in the case are whether the Secretary had authority by oral direction to vary the terms of a written contract wherein was provided a formal method for varying such contract, and whether, under the action taken by the Secretary, any claim arose in favor of claimants for extra compensation," and that "the claim involves controverted questions of fact and law."

All vouchers, papers, proofs, and documents pertaining to the claim are herewith transmitted, together with a list of said documents.

Respectfully, yours,

S. WIKE,
Acting Secretary.

2 In the Court of Claims, December term, 1896.

BYRON BARLOW, JAMES E. BLACKWELL, and James M. Dougan, partners doing business under the firm name and style of Byron Barlow & Co., v. THE UNITED STATES.	Department case No. 50.

II. *Petition.*—Filed January 9, 1897.

To the Honorable the Court of Claims:

The claimants, Byron Barlow, James E. Blackwell, and James M. Dougan, respectfully represent:

The claimants, Byron Barlow, James E. Blackwell, and James M. Dougan, as co-partners in business under the firm name and style of Byron Barlow & Company, all of the city of Tacoma, in the State of Washington, did on the 29th day of October, in the year 1892, enter into a contract with the United States as the accepted bidders under advertisement for the construction of a dry dock at the United States naval station on Puget Sound, in the State of Washington, for particulars of which contract reference is made to the contract itself, a copy of

which is embraced in the papers transmitted to this court by the Secretary of the Treasury in this cause, and certain material provisions of which contract are as follows:

"Seventh. The construction of the said dry dock and its accessories and appurtenances herein contracted for shall conform in all respects to and with the plans and specifications aforesaid, which plans and specifications are hereto annexed, and shall be deemed and taken as
3 forming a part of this contract, with the like operation and effect as if the same were incorporated herein. No omission in the plans or specifications of any detail, object, or provision necessary to carry this contract into full and complete effect, in accordance with the true intent and meaning hereof, shall operate to the disadvantage of the United States, but the same shall be satisfactorily supplied, performed, and observed by the contractors, and all claims for extra compensation by reason of, or for or on account of, such extra performance, are hereby, and in consideration of the premises, expressly waived; and it is hereby further provided, and this contract is upon the express condition, that the said plans and specifications shall not be changed in any respect, except upon the written order of the Bureau of Yards and Docks; and that if at any time it shall be found advantageous or necessary to make any change or modification in the aforesaid plans and specifications, such change or modification must be agreed upon in writing by the parties to the contract, the agreement to set forth fully the reasons for such change and the nature thereof, and the increased or diminished compensation, based upon the estimated actual cost thereof which the contractors shall receive, if any: Provided, That whenever the said changes increase or decrease the cost by a sum exceeding five hundred dollars ($500), the actual cost thereof shall be determined by a board of naval officers appointed for the purpose, and the contractors shall be bound by the determination of said board, or a majority thereof, as to the amount of increased or diminished compensation they shall be entitled to receive in consequence of such change or changes: And provided also, That no further payment shall be made unless such supplemental or modified agreement shall have been signed before the obligation arising from such change or modification was incurred, and until after its approval by the party of the second part: And provided further, That no change herein provided for shall in any manner affect the validity of this contract."

* * * * * * *

"Fourteenth. It is expressly understood, covenanted, and agreed, by and between the parties to this contract, that if any doubts or
4 disputes arise as to the meaning or requirements of anything in this contract, or if any discrepancy appear between the aforesaid plans and specifications and this contract, the matter shall be at once referred for the consideration and decision of the Chief of the Bureau of Yards and Docks, and his decision thereon shall be final, subject, however, to the right of the contractors to appeal from such decision to the Secretary of the Navy, who, in case of such appeal, shall be furnished by the contractors with a full and complete statement of the grounds of their appeal, in writing, and shall thereupon take such action in the premises as, in his judgment, the rights and interests of the

respective parties to this contract shall require, and the parties of the first part hereby bind themselves and their heirs and assigns, and their personal and legal representatives, to abide by his, the said Secretary's, decision in the premises."

Said contract was accompanied by plans and specifications, certain of the provisions of which specifications, material to the present case, were as follows:

"The contractor shall furnish all necessary facilities, should it be deemed advisable by the engineer to make an examination of any work already completed. If the work is found defective in any respect, he shall defray all expenses of such examination and of satisfactory reconstruction. If the work is found perfect, such expenses will be allowed for."

"All piles in the bottom of the dock shall be accurately spaced and driven vertically until a satisfactory depth has been reached and the penetration is not more than one-quarter (¼) inch under the last blow of a hammer weighing three thousand (3,000) pounds falling twenty-five (25) feet, or the equivalent thereof, unless the Bureau shall authorize a modification hereof after examination and tests are made."

The claimants thereupon proceeded with the execution of said contract in strict accordance with the terms thereof, and, among other things, drove all piles in the bottom of the dock until a depth had been reached at which the penetration was not more than one-quarter (¼) of an inch under the last blow of a hammer weighing three thousand (3,000) pounds falling twenty-five (25) feet, and until more than half of such piling had been completed to the satisfaction of the engineer in charge and under the direct personal orders of the inspectors acting under the direction of such engineer, and until such inspectors were personally satisfied as to each and every pile so driven.

On or about the 16th day of February, in the year 1894, the claimants were notified by the engineer in charge of a direction of the Navy Department requiring that said piles should be put in by water jet, and further notifying them to provide the necessary plant for that method of putting in the piles. Whereupon the claimants called the attention of said engineer to the paragraph of the specification hereinbefore cited providing for the driving of such piles by means of a hammer, specifying the weight and drop of the same, and the fact that they had provided hammer pile drivers amply sufficient in all respects for driving all the piles, and that such piles were being driven in strict accordance with the terms of the specifications to the satisfaction of the inspectors on the work and of said engineer himself, and demanded that if it was decided on the part of the United States to make so radical a change in the mode of driving the piles, it should be done by the appointment of a naval board, as provided in paragraph 7 of the contract, and at the cost of the United States, and further stated that in the opinion of the claimants an attempt to jetty the piles into the sandy foundations underlying said dry dock would disintegrate and destroy the bottom, and insisted that the Government should assume all responsibility for the damage that might be thereby caused. Thereupon, and in consideration of the objections so raised by the claimants, they were allowed to proceed with the driving

of piles by the hammer as before, and their work in so doing was
6 passed and approved by the inspector on the work and by the engineer in charge and regularly paid for on duly certified vouchers until the 13th day of April, 1894, when, by telegraphic dispatch received from the Navy Department, work on such pile driving was temporarily suspended and continued to be so suspended until the Secretary of the Navy, Hon. Hilary A. Herbert, in the month of May, 1894, personally visited the site of the work for the purpose of inspecting the driving of piles by the hammer, and personally directed, on or about the 21st day of May, in the year 1894, that as an experiment the contractors should provide a plant for using the water jet, which they did, and proceeded to drive said piles by the use of said water jet until about the 8th day of June, 1894, when, as the apprehensions previously expressed by the claimants in regard to disintegrating the foundations of said dry dock by the use of said water jet appeared to be verified, the same was suspended by direction from the civil engineer of the United States Navy in charge of the work until a direction could be obtained by telegraph from the Secretary of the Navy, which direction was on the 9th day of June, 1894, given by said Secretary by telegraph to the commanding officer at the Puget Sound Naval Station, as follows:

"Use jet with least amount of water to get piles down, and hammer to set them firm."

Whereupon the use of said water jet was resumed in the manner required by said telegram, but with such unsatisfactory results that the commanding officer at said Puget Sound Naval Station thus advised the Department by telegram dated June 12, 1894:

"Obeying Department telegram of 9th inst., resumed driving piles with water jet. Engineer reports results worse than first trial. Piles
7 can not be made to remain in place, and water injuring bottom seriously. Contractors protest against further procedure with water jet and ask for board of engineers to pass on same. Work stopped pending decision. Report by mail."

Whereupon, upon the demand of these claimants as contractors, a naval board, of which Captain P. C. Asserson, United States Navy, was president, was convened to examine, among other questions relating to said contract, that of the manner of driving piles in the bottom of said dry dock; and said board, after thorough examination of the questions involved and experimenting with both the water jet and driving by the hammer, reported to the Secretary of the Navy, among other things, as follows, under date of June 30, 1894:

"Board unanimously recommends foundation piles twelve to fourteen inches diameter, pointed, and driven with drop hammer six feet minimum depth below bottom of concrete. All further sheet piling and cut-offs in bottom to be omitted and concrete cut-offs thirty inches thick by six feet depth below foundations substituted therefor under entrance works and on sides in advance of finished floor. Additional foundation piles to be interpolated between those now sunk by water jet."

Thereupon, on the 2d day of July, 1894, the Secretary of the Navy telegraphed to the commanding officer at Puget Sound Naval Station as follows:

"Recommendations of Asserson Board as per telegram of June 30th approved. Direct board to estimate increase or decrease of cost in accordance with seventh clause of contract. Show estimate to contractors; final resistance to piling as per specifications; let work proceed."

Thereafter the remainder of the piles in the bottom of said dry dock were driven in the manner employed previously to the experimental use of the water jet, to the satisfaction of the inspectors on said work and of the engineer in charge, and were approved by said inspectors and
8 engineer and by the Department, subject only to the requirement that the same should be driven to a depth of not less than six feet, which depth was readily reached by the use of the hammer and without the employment of the water jet or any means of a similar character.

The claimants, on or about the 24th day of July, in the year 1894, at the request of the board hereinbefore referred to, of which Captain P. C. Asserson was president, submitted to said board a full and correct statement showing the amount of expense incurred by them growing out of the experiments with said water jet, as follows:

"For labor and materials in experimenting jetting and pulling piles and making tests for Asserson Board of Engineers, and previously.

May 23.	To 1 force pump	$700.00
	" piping and connections for pump	187.00
	" hose lines and tackle	60.00
	" labor setting up plant	106.70
	" blacksmithing, staples, tongs, and eyebolts	16.55
July 5.	To 2,732 lin. ft. round piles used from May 27th to July 5 in experiments, 5c	136.60
	" labor in driving piles by water jet from May 27th to June 12th	183.35
	" labor testing and pulling piles for Asserson Board from June 25th to July 5th	390.95
	" pumping for water jet	75.00
	" general pumping during construction, one-fourth of total cost, 15 days, at $7.50	112.50
	" extra cutting off of piles raised by use of water jet	5.00
		$1,972.65
	Profit, 10 per cent	197.26
		$2,169.91

9 Said board, upon consideration of said account, made the following recommendation by report to the Secretary of the Navy, dated August 1, 1894:

"The board recommends that additional compensation be allowed and paid for cost of experimenting in jetting piles, May 27th to June 12, and in driving and pulling test piles, June 25 to July 5, as follows:

May 27 to June 12—	
2,508 lin. ft. round piles, driven, at 15c	$376.20
Labor in setting up plant, ironwork, &c	123.25
Use of special pumping plant, appliances, &c	150.00

June 25 to July 5th—

224 lin. ft. round piles used to replace those pulled by board, at 5c	$11.20
Labor, use of machinery, appliances, &c	390.95
Total	1,051.60
Add for profit 10 per cent	105.16
	$1,156.76

Said board, though expressing the opinion that the contractors were equitably entitled to a reasonable compensation for any additional expense incurred by them in the prosecution of the work in consequence of unusual delays that may be found to have been caused by the Government, yet held that they were unable to properly consider that question, in view of their having no means of verifying the claim for such additional compensation, and for that reason the voucher issued in accordance with their recommendation, as hereinbefore stated, did not include any consideration of such delay, and no question in regard thereto has been referred by the Secretary of the Treasury to this court in this proceeding, and the claimants reserve all rights of action in that particular.

Thereupon, and after the submission of the report of said board, the following voucher was issued by the Navy Department:

10 "*Special voucher.*

"NAVY DEPARTMENT,
"BUREAU OF YARDS AND DOCKS.

"*The United States to* Byron Barlow & Co., *Dr.*

"'Appropriation: Dry dock, Puget Sound.'
1894.

Sept. 25th. Extra allowance for cost of experimenting in jetting piles, etc., as recommended by the 'Asserson board' August 1, 1894, viz:

2,508 lin. ft. round piles, jetted, at 15 cents	$376.20
Labor, setting up jetting plant, ironwork, etc	123.25
Use of special pumping plant and appliances	150.00
Cost of experimenting by board	390.95
224 lin. ft. round piles to replace those pulled by board, at 5 cents	11.20
	$1,051.60
Add 10 per cent profit	105.16
Amount due	$1,156.76

"NAVY DEPARTMENT.

"The work covered by this bill was verbally authorized by me on May 21, 1894.

"H. A. HERBERT,
"*Secretary of the Navy.*

"Oct. 11, 1894.

"Having fully examined the above charges, I certify that they are in all respects in conformity with the written findings and report of the Asserson board, dated August 1, 1894.

"F. C. PRINDLE,
"*Civil Engineer, U. S. N.*

"Received the above as charged at Puget Sound Naval Station, this 25th day of September, 1894.

"F. C. PRINDLE,
"*Civil Engineer, U. S. N.*

11

"U. S. NAVY-YARD,
"PUGET SOUND U. S. NAVAL STATION,
"*26th September, 1894.*

"Approved for the sum of one thousand one hundred fifty-six dollars and seventy-six cents.

JOHN C. MORONG,
"*Comdr., U. S. N., Commandant.*

"NAVY DEPARTMENT, BUREAU OF YARDS AND DOCKS,
"*11th October, 1894.*

"Approved in quadruplicate for eleven hundred and fifty-six dollars and seventy-six cents, for settlement by the accounting officers of the Treasury from the above appropriation.

"E. O. MATTHEWS,
"*Chief of Bureau.*"

The claimants hereby expressly reserve all other or additional rights of action growing out of this contract, the present reference by the Secretary of the Treasury being wholly confined to the single claim or matter of the work connected with the water jet, and for which the voucher in question was issued.

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimants are the sole owners of this claim and the only persons interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimants are justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimants are citizens of the United States, and have at all times borne true allegiance to the Government thereof, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimants believe the facts as stated in this petition to be true. And the claimants pray that the facts may be found as hereinbefore stated, and that the court will find as a conclusion of law that they are entitled to be paid the value of the work done by them in connection with said dry dock, and that the court will report its findings of fact and conclusions of law to the Secretary of the Treasury, as provided in section two of the act approved March 3, 1883.

GEORGE A. KING,
RUFUS H. THAYER,
Attorneys for Claimants.

DISTRICT OF COLUMBIA, *ss:*

James E. Blackwell, being duly sworn, deposes and says: I am one of the claimants in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

JAS. E. BLACKWELL.

Subscribed and sworn to before me this 8th day of January, 1897.

MARTHA M. BECK,
[SEAL.] *Commissioner of the Court of Claims.*

12 III. *General Traverse.*—Filed May 21, 1900.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney-General.

13 In the Court of Claims, December term, 1896.

BYRON BARLOW, JAMES E. BLACKWELL, AND JAMES M. DOUGAN, partners doing business under the firm name and style of Byron Barlow & Co.
v.
THE UNITED STATES.
No. 20698.

IV. *Petition.*—Filed January 13, 1897.

To the Honorable the Court of Claims:

The claimants, Byron Barlow, James E. Blackwell, and James M. Dougan, respectfully represent:

The claimants, Byron Barlow, James E. Blackwell, and James M. Dougan, as copartners in business under the firm name and style of Byron Barlow & Co., all of the city of Tacoma, in the State of Washington, did, on the 29th day of October, in the year 1892, enter into a contract with the United States as the accepted bidders under advertisement for the construction of a dry dock at the United States naval station on Puget Sound, in the State of Washington, for particulars of which contract reference is made to the contract itself.

Said contract was accompained by certain plans and specifications, as to the particulars of which reference is made to the originals, which, or certified copies of which, will be duly filed in this cause.

The claimants thereupon proceeded with the execution of said contract in strict accordance with the terms thereof.

14 *Claim I. Extra cost of other sandstone required.*

In pursuance of that clause of the specifications which provides, under the head of "Stone masonry," that "the ashlar must be of granite or sandstone, of quality approved by the engineer," the claimants in submitting their proposals under the advertisement for said contract had submitted one bid based upon the use of sandstone for the ashlar, and another, of larger amount, based upon the use of granite, and the acceptance of their proposal by the Navy Department was of the lower bid, based upon the use of sandstone.

The claimants thereupon submitted to the engineer in charge a sample of certain sandstone, known as Tenino sandstone, in all respects in accordance with the specifications, and suitable for use upon the work, and the same was approved by the engineer in charge.

Thereupon, on the 4th day of May, in the year 1893, the claimants entered into a contract with George N. Vantine, Wesley D. Fenton, and Charles A. Billings, doing business under the firm name and style of *the* The Tenino Stone Quarry Company, whereby said company agreed to furnish and deliver to the claimants all of the sandstone required for the work under their contract.

Said company thereupon proceeded to furnish the sandstone required, and did, on the 20th day of June, 1893, furnish a considerable quantity, which was delivered by the claimants at the site of the work, and was in all respects suitable for use under their contract with the United States, and was inspected and accepted by the civil engineer of the United States Navy in charge of said work, and for which said civil engineer issued a voucher for payment, which voucher was approved by the commanding officer of the Puget Sound Naval Station and forwarded to the Navy Department for payment.

15 Shortly after the delivery of said stone at the site of said dry dock, to wit, on the 28th day of June, in the year 1893, the claimants entered into a contract with Albert Beaudette and Louis Beaudette, stone cutters, doing business under the firm name and style of Beaudette Brothers, to cut said stone, and all of the stone required under their contract for the construction of said dry dock, to the dimensions required by the contract, the claimants to pay for the same at the rate of seven dollars (87) per stone. But before any of the stone had been cut under said contract, to wit on the 8th day of September, in the year 1893, the claimants were notified by the civil engineer of the United States Navy in charge of said work that in a letter dated August 31, 1893, the chief of the Bureau of Yards and Docks, referring to the Tenino sandstone, "declined to accept the same as proper material for the stone masonry for the dry dock construction," and requested the claimants to furnish him, said engineer, with samples of such other sandstone as they might select, in order that the same might be subjected to test and analysis. Said engineer, however, did not at that or any other time express any disapproval on his part of said Tenino sandstone, but was then and at all times satisfied with the same, and would have continued the acceptance of the same, stating as late as the 14th day of June, 1894, in a letter to a member of the firm constituting said Tenino Stone Quarry Company that—

"When I accepted the stone from your quarry for use in the dry dock

here, I considered it entirely suited for the work. Since then I have had no reason for changing my views. I still consider the product of your quarry a most excellent stone, and suitable for the work."

Upon being notified, however, of the requirement made by the
16 Bureau of Yards and Docks that other stone be furnished, the claimants, though protesting against such ruling, entered into a contract with John A. Soderberg, lessee from E. W. Johnston of a certain quarry known as the Dog Fish Point Quarry, and furnished stone from the same, which stone was accepted. Said quarry, however, was soon exhausted, as to its capacity to furnish stone of so large a size as was required for said dry dock.

The claimants having then exhausted all means of obtaining stone of suitable size by private contract, carefully inquired as to where any stone could be obtained of suitable quality, capable of being cut into the required size for use in the entrance of said dry dock, and the civil engineer of the United States Navy in charge of said work also made careful inquiry in regard thereto, and in a report addressed to the commandant of said Puget Sound Naval Station, and by him transmitted to the Navy Department, stated that the only suitable stone was a hard sandstone to be found on Sucia Island, which island constituted a Government reservation for light-house purposes.

Thereupon the claimants applied to the Secretary of the Treasury for permission to quarry stone on said island, and after obtaining the required permission opened at great expense a quarry on said island, and brought from San Francisco all the force of stonecutters required to cut said stone to the dimensions required for the work on said dry dock, and at an expense greatly exceeding that which would have been necessary in the case of the Tenino sandstone.

The claimants were also sued by the aforesaid Beaudette Brothers in an action claiming damages amounting to five thousand two hundred and two dollars ($5,202) for breach of their contract by failing to furnish stone for them, said Beaudette Brothers, to cut, as was required
17 by their contract, which action is still pending in the superior court of Kitsap County, in the State of Washington.

The claimants therefore claim as follows:

1. Reimbursement for Tenino sandstone furnished and quarried	$5,995.45
2. Reimbursement for damage suit by Beaudette Brothers for cutting	5,202.00
3. Reimbursement for cost of furnishing and cutting other sandstone in excess of what Tenino stone would have cost	19,178.98
Total	$30,376.43

Claim II. Extra foundations for boiler house and boilers.

In the construction of the boiler house and boilers the claimants laid the foundations for the same under the direction and to the acceptance of the civil engineer of the United States Navy in charge of said work on behalf of the United States, who embraced all the items thereof in his

monthly estimate which he transmitted to his superior officer for payment. The successor, however, of the engineer first in charge objected to said foundations, and required that the foundations of the boilers be entirely removed and renewed and that those of the boiler house be strengthened.

The claimants protested against being required to do over again any work already once done to the satisfaction and acceptance of the engineer in charge, and insisted that if done, it be at the expense of the Government, and proceeded to do the work as ordered accordingly.

The reasonable value of said work, and which the claimants hereby claim, was as follows:

1. Extra foundations for boiler house	$312.12
2. Extra foundations for boilers	384.56
Total	$696.68

18 *Claim III. Extra work at exit of brick discharge culvert.*

In the original drawings for the work at the exit of the brick discharge culvert the concrete and timber work forming the foundations at the brick arch were shown as stopping at a certain vertical line given on said drawings. It was subsequently determined by the Bureau of Yards and Docks, in order to prevent the washing out of the material under said foundation, to put in a row of sheet piling across the exit of said culvert, and this was afterwards embodied in a separate contract under which the claimants were paid for the same.

It was afterwards decided by the Bureau of Yards and Docks that a concrete toe should be put against said sheet piling to prevent the same from being destroyed by the teredos, and the civil engineer of the Navy in charge of said work on behalf of the Government informed the claimants, they not having time to submit an estimate and have the price agreed upon, that they might do the work and afterwards put in their bill for the same, and he would transmit it to the Bureau of Yards and Docks with his recommendation for payment, which he did on the 25th of July, 1895. The Bureau of Yards and Docks, however, on or about the 1st day of August, in the year 1895, refused to recognize any extra charge for said concrete toe, insisting that both the sheet piling and the concrete toe were required in order to prevent the teredos from attacking the timber which was laid on the piling, and which timber was required to be so laid in consequence of the piles having been, by mistake of the claimants, cut off too low; whereas, in point of fact, neither the sheet piling nor the concrete toe was required in any manner as a consequence of said mistake, but said sheet piling would have been equally required to protect the piles and timber
19 work had said work been constructed as originally designed, and said sheet piling had in accordance with this view, therefore, been made the subject of a separate contract and paid for as such, and said concrete toe was required only to protect the same.

The reasonable value of the extra work on said concrete toe amounted to $59.35, which amount the claimants hereby claim.

Claim IV. Reimbursement for being required by civil engineer to ram or sluice all filling, when not called for by contract and specifications.

In the specifications accompanying the contract for said dry dock there was no requirement that the filling around the dry dock should be rammed, or sluiced, the only reference to the refilling of earth contained in said specifications being as follows:

"All earth excavated, and not required for refilling or grading within the limits of structures, is to be deposited within the limits of the station, at reasonable distances from the dock, where indicated by the commandant, not to exceed 1,000 feet from the dock, and brought up to the grade of the station as established."

* * * * * * *

"Upon completion of the work, the surface is to be evenly graded from coping back to the line of sheet piling and around the pump-house, to correspond with the grade of the station adjoining, as the civil engineer or other officer in charge may direct."

In refilling the dirt after the altars were in place, under the direction of the civil engineer of the United States Navy then in charge of said work, no part of the filling was rammed or sluiced except the clay puddling, as under his interpretation of the specifications and contract the same was not required and had not been done on the dry
20 dock shortly before that constructed at the navy-yard at Norfolk, Virginia. Subsequently, however, the successor of the civil engineer first in charge raised the question of ramming the back filling behind the altars and, upon the claimants objecting thereto, referred the question to the Bureau of Yards and Docks, and on the 13th day of November, in the year 1894, informed the claimants that said Bureau, on the 3d day of November, 1894, held that the contractors were required under their contract to ram the back fillings to whatever extent was required for the satisfaction of the inspector in charge. The claimants protested that this was not required by the specifications, and that no ramming or sluicing of the filling was ever required in railroad or other similar work by the custom of contractors in work of this character unless distinctly specified. The claimants, though thus protesting that the same was not required by the specifications and in accordance with the demand made on behalf of the Government, sluiced with water all of the material inside of the sheet piling surrounding the dock.

By reference to the specifications it will be seen that the claimants were required, in making proposals for the work, to submit a classification of the cost at schedule prices to aggregate the total contract price. In accordance with this requirement the claimants submitted a schedule of prices, which was approved and incorporated in the contract, and under which, among other items, was contained one "For filling and grading, per cubic yard, thirty cents," but such schedule contained no mention of ramming or sluicing the fillings. Subsequently the claimants entered into a supplemental contract for adding wing and approach walls to the entrance of the dock, under which they were allowed by a board of naval officers, of which Captain P. C. Asserson, civil engineer, United States Navy, was president, at the rate of forty-
21 five cents per cubic yard for all filling which was to be rammed, besides a profit thereon of ten per cent, thus showing that the

ramming of fillings was regarded by said board as extra and additional to the work of filling itself.

The claimants therefore claim ten cents per cubic yard for 37,227 cubic yards of filling, rammed or sluiced, amounting to $3,722.70.

Claim V.—Damages for delay caused by Government in driving piles.

From the 13th day of April, in the year 1894, to the 5th day of July, 1894, being seventy (70) days, exclusive of Sundays, the claimants were delayed in the work of driving piles in the foundations of said dock by the order of the Navy Department suspending the same on the former date for the purpose of experimenting with the method of driving piles by water jet, as is more fully and at large set forth in the petition of these claimants in the case already entered on the docket of this court as Department case No. 50. In said case, referred to as Department case No. 50, the Secretary of the Treasury has referred to this court for adjustment the claim for the expense in making the experiments to jetty said piles, or piling, and testing the same for the board during its visit in June, 1894, and for the additional expense of interpolating new piles between those already driven in order to repair the damage thereby done to the bottom. In regard to the question, however, of the damage for delay, the Asserson board of civil engineers, whose report has been hereinbefore referred to and is more particularly mentioned in the petition of these claimants in Department case No. 50, reported as follows:

22 "ARTICLE 26 e 5. The board is of the opinion that the contractors are equitably entitled to a reasonable compensation for any additional expense incurred by them in the prosecution of the work, in consequence of unusual delays that may be found to have been caused by the Government, but having no means of verifying the claim submitted for such additional compensation the board is unable to properly consider this question."

The claimants being delayed from the date of the order suspending work on the 13th of April, 1894, till the 5th day of July, 1894, the date on which they were able to resume work after being properly notified, therefore claim the actual cost to them of such delay, computing therein only the actual and necessary daily expense of the men actually and permanently employed, and the material necessary for use, and excluding therefrom all who were laid off without pay during this period. Thus computed such expense amounts to seventy-five dollars ($75) per day, a total for the seventy (70) days of suspension of $5,250.

RECAPITULATION.

Claim I. Extra cost of other sandstone after Tenino stone had been accepted and then condemned:	
Item 1. Reimbursement for Tenino stone furnished and quarried	$5,995.45
Item 2. Reimbursement for damage suit by Beaudette Bros. for cutting	5,202.00
Item 3. Reimbursement for cost of furnishing and cutting other sandstone in excess of what Tenino stone would have cost	19,178.98
Amount carried forward	$30,376.43

23	Amount brought forward	$30,376.43
	Claim II:	
	(*a*) Extra foundations for boiler house	312.12
	(*b*) Extra foundations for boilers	384.56
	Claim III. Extra work at exit of brick discharge culvert.	59.35
	Claim IV. Reimbursement for being required by civil engineer to ram or sluice all filling, when not called for by contract and specifications	3,722.70
	Claim V. Damages for delay caused by Government in driving piles	5,250.00
	Total claims	$40,105.16

The claimants submitted this claim to the Secretary of the Navy on the 11th day of March, in the year 1896, but said Secretary, without passing upon the merits thereof, held on the 28th day of April, in the year 1896, in a communication in writing addressed to the claimants, "that the nature of said claims is such that the Department is wholly without authority, under the statutes, to consider the same with a view to their adjustment and payment, and that it will therefore be necessary to their settlement that you submit them to the Court of Claims for its determination."

In the final settlement made and release given in pursuance of the terms of section 6 of article 12 of the contract, and given under the signature of the claimants the 20th day of September, 1896, the claims hereinbefore set forth, and which had on the 11th day of March, 1896,
24 as just hereinbefore stated, been presented to the Secretary of the Navy, were expressly excepted and excluded therefrom, without prejudice.

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimants are the sole owners of this claim and the only persons interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimants are justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimants are citizens of the United States, and have at all times borne true allegiance to the Government thereof, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimants believe the facts as stated in this petition to be true. And the claimants claim forty thousand one hundred and five dollars and sixteen cents ($40,105.16).

GEORGE A. KING,
RUFUS H. THAYER,
Attorneys for claimants.

DISTRICT OF COLUMBIA, *ss:*

James E. Blackwell, being duly sworn, deposes and says: I am one of the claimants in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

JAS. E. BLACKWELL.

Subscribed and sworn to before me this 13th day of January, 1897.

[SEAL.] MARTHA M. BECK,
Commissioner of the Court of Claims.

25 V. *General traverse*—Filed May 21, 1900.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney-General.

26 VI. *Motion to consolidate causes for trial*—Filed July 24, 1897.

BYRON BARLOW, JAMES E. BLACKWELL, AND James M. Dougan, partners doing business under the firm name and style of Byron Barlow & Co., *vs.* THE UNITED STATES.	General jurisdiction No. 20698. Department case No. 50.

Now come the claimants in these causes and move the court that these causes be consolidated for trial.

GEORGE A. KING,
RUFUS H. THAYER,
Attorneys for Claimants.

I assent.

G. H. GORMAN,
Assistant Attorney.

Allowed subject to exceptions if any are filed.

CHARLES B. HOWRY, *Judge.*

27 VII. *Findings of fact and conclusions of law*—Filed May 21, 1900.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

On the 29th of October, 1892, the following contract was entered into between the claimants and the United States:

"*Contract for the construction of a dry dock to be located at the U. S. naval station, Puget Sound, Washington.*

"This contract, of two parts, made and concluded this twenty-ninth day of October, A. D. 1892, by and between Byron Barlow, James E.

Blackwell, and J. M. Dougan, all of the city of Tacoma, Pierce County, State of Washington, copartners in business under the firm name of Byron Barlow & Company, and hereinafter designated as the contractors, parties of the first part, and The United States, represented by Commodore N. H. Farquhar, U. S. Navy, Chief of the Bureau of Yards and Docks, Navy Department, acting under the direction of the Secretary of the Navy, party of the second part.

"Whereas, by advertisement, dated August 8, 1892, proposals were invited by the Chief of the Bureau of Yards and Docks, Navy Department, for the construction, by contract, of a dry dock of the general dimensions, and to be located at the place therein specified; and

"Whereas the proposal of the said contractors, dated September 3, 1892, to construct a dry dock to be located at the United States naval station, Puget Sound, Washington, has been duly accepted by the Secretary of the Navy:

"Now, therefore, this contract witnesses: That, in consideration of the premises, and for and in consideration of the payments to be made as hereinafter provided for, the parties of the first part, for themselves, their heirs, and assigns, and their personal and legal representatives, do hereby covenant and agree to and with the United States as follows—that is to say:

"First. The contractors will, within sixty days after the date of the notice to them that they are given the possession and occupancy of the site by the party of the second part, which possession and occupancy of the said site during the period of construction, and until the completion and delivery of the work hereinafter mentioned, shall be secured to the contractors by the party of the second part, commence, and within thirty-six calendar months from the expiration of said sixty days, construct and complete, ready to receive vessels, a dry dock, to be located at the place shown on a plan accompanying this contract, at the naval station,
28 Puget Sound, Washington; and will, at their own risk and expense, furnish and provide all labor, materials, tools, implements, and appliances of every description—all of which shall be of the best kind and quality adapted for the work as described in the specifications—necessary or requisite in and about the construction of said dry dock and the caisson, pumping machinery, pump house, culverts, and all other accessories and appurtenances, in accordance with the aforesaid plans and specifications, subject to the approval of the civil engineer, or such other competent officer or person or persons as may for that purpose be designated by the party of the second part; it being further mutually stipulated and agreed that the officer or officers, person or persons, thus designated shall and may, from time to time during the progress of the work, inspect all material furnished and all work done under this contract, with full power to reject any material or work, in whole or in part, which he or they may deem unsuitable for the purpose or purposes intended, or not in strict conformity with the spirit and intent of this contract and with the aforesaid plans and specifications, and to cause any inferior or unsafe work to be taken down, by and at the expense of the contractors; and that all such rejected material shall be at once removed from the station and replaced by material satisfactory to such inspector, and that all such inferior or unsafe work shall be replaced by satisfactory work, by and at the expense of the contractors. Such inspectors shall at

all times during the progress of the work have full access thereto, and the contractors shall furnish them with full facilities for the inspection and superintendence of the same.

"It is further mutually stipulated and agreed that at and upon the request of the civil engineer, or other officer in charge, any disorderly, careless, or incompetent person or persons employed by the contractors, in or about the work to be done under this contract, shall be at once discharged and not again employed therein; and that all necessary and suitable precautions shall be taken by the contractors, during the progress and until the final completion of such work, to avoid or prevent accidents, and that the contractors will indemnify and save harmless the party of the second part from all claims against the United States, and from all actions and proceedings at law, and from all costs and damages for or by reason of any injury to person or property, resulting from, or directly or indirectly attributable to, any accident or accidents which may occur in or during the prosecution of the work and in connection therewith or any part thereof, or to any carelessness or negligence, wilful or otherwise, of any person or persons employed by the contractors, or to the use of improper or defective materials, or to any act or omission of the contractors prior to the final acceptance of the said dry dock.

"Second. The contractors will at all times during the progress of the work give their personal supervision and attention to the same and to every part and detail thereof, and in case of their absence will have a competent representative or foreman present, authorized to act for them in all matters connected with the work, and to receive and follow directions relating thereto when given by the civil engineer, or other officer in charge; and for all acts and omissions of such representative or foreman in the premises the contractors shall be responsible.

"Third. The contractors will, from time to time, as the same may accumulate during the progress of the work, remove all refuse material and rubbish connected therewith, and any portion of such refuse material or rubbish which the contractors may agree to deposit within the limits of said station shall be so deposited by the contractors, at their own expense, where the commandant may direct, within reasonable
29 distance from the work. On the completion of the work the surroundings shall be thoroughly cleaned up, filled, and graded to the established level or levels of the station as the civil engineer, or other officer in charge, may direct, and all plant and surplus material, including the cofferdam and its filling, shall be removed, by and at the expense of the contractors, without unnecessary delay.

"Fourth. The contractors stipulate and agree to remove any and all obstructions at and in front of the entrance of the said dry dock occasioned by the construction of the cofferdam without extra charge.

"Fifth. Insurance to the amount of fifty thousand dollars ($50,000) shall be effected in such manner and in such companies as shall be approved by the Chief of the Bureau of Yards and Docks, which insurance shall be renewed from time to time at the expense of the contractors; the loss, if any, to be stated in the policies as payable to the United States, for whom it may concern.

"Sixth. The contractors shall hold and save the United States harmless from and against all and every just and legal demand or demands of any nature or kind, for or on account of the adoption of any plan, model,

design, or suggestion, or for or on account of the use of any patented invention, article, or appliance, which has been or may be adopted or used in or about the construction of the said dry dock, its accessories and appurtenances, or any part thereof, under this contract, or its use after completion, and to protect and discharge the Government from all liability on account thereof by proper releases from patentees or otherwise, and to the satisfaction of the Secretary of the Navy, before final payment under this contract shall be made, excepting in the case of such methods, constructions, and appliances for which the Government owns the right, or has received license.

"Seventh. The construction of the said dry dock and its accessories and appurtenances herein contracted for shall conform in all respects to and with the plans and specifications aforesaid, which plans and specifications are hereto annexed, and shall be deemed and taken as forming a part of this contract, with the like operation and effect as if the same were incorporated herein. No omission in the plans or specifications of any detail, object, or provision necessary to carry this contract into full and complete effect, in accordance with the true intent and meaning hereof, shall operate to the disadvantage of the United States, but the same shall be satisfactorily supplied, performed, and observed by the contractors, and all claims for extra compensation by reason of, or for or on account of, such extra performance, are hereby, and in consideration of the premises, expressly waived; and it is hereby further provided, and this contract is upon the express condition, that the said plans and specifications shall not be changed in any respect, except upon the written order of the Bureau of Yards and Docks; and that if at any time it shall be found advantageous or necessary to make any change or modification in the aforesaid plans and specifications, such change or modification must be agreed upon in writing by the parties to the contract, the agreement to set forth fully the reasons for such change, and the nature thereof, and the increased or diminished compensation, based upon the estimated actual cost thereof which the contractors shall receive, if any: Provided, That whenever the said changes increase or decrease the cost by a sum exceeding five hundred dollars ($500) the actual cost thereof shall be determined by a board of naval officers appointed for the purpose, and the contractors shall be bound by the determination of said board, or a majority thereof, as to the amount of increased or diminished compensation they shall be entitled to receive in consequence of such change or changes: And provided also, That no further payment shall be made unless such supplemental or modified agreement shall have been signed before the obligation arising from such change or modification was incurred, and until after its approval by the party of the second part: And provided further, That no change herein provided for shall in any manner affect the validity of this contract.

"Eighth. The aforesaid dry dock and its accessories and appurtenances and each and every part thereof, shall be constructed of approved materials and in a thoroughly substantial and workmanlike manner, in accordance with the true intent, meaning, and spirit of the contract, plans, and specifications, to the satisfaction of the party of the second part.

"Ninth. In case the completion of the said dry dock, its accessories and appurtenances shall be delayed beyond the said period of thirty-six (36) calendar months, deductions of fifty dollars ($50) per day during the first three months following the expiration of said period, and of one hundred dollars ($100) per day for each and every day beyond the expiration of the said three months, may, in the discretion of the Secretary of the Navy, be made from the contract price of said dry dock; all such deductions to be made, from time to time, from any payment or payments falling due under the contract: Provided, however, That such delays shall not have been caused by the act of the United States or its officers or agents, or by fire or water, or by any strike or stand out of workmen employed in or about the work, or by other circumstances beyond the control of the contractors: And provided further, That in case of such alleged delay the contractors shall give immediate notice thereof to the Secretary of the Navy.

"In case any question shall arise under this contract concerning penalties, such question, with all the facts relating thereto, shall be submitted to the Secretary of the Navy for consideration, and his decision thereon shall be conclusive and binding upon all the parties to this contract. All delays which the Secretary of the Navy shall find to be properly attributable to the Navy Department, or to its authorized officers or agents, or any or either of them, and to have been a delay operating upon the final completion of the dry dock within the times herein specified therefor, shall entitle the contractors to a corresponding extension of the period herein prescribed for the completion of said dry dock: Provided, however, That no delay, attributed by the contractors to the Department, its officers or agents, or the alleged cause or causes thereof, shall be considered by the Secretary of the Navy unless the contractors shall, at the time of the occurrence of such delay, notify him in writing of the facts and circumstances in each case, and of the extent to which they claim that the final completion of the dry dock is thereby delayed.

"Tenth. It is mutually understood, covenanted, and agreed, by and between the parties hereto, that the said dry dock shall not be accepted and that the contractors shall not be entitled to the final payment or to reservations previously made until twenty days after a complete test of said dock shall have been had under the direction of such officers as may be designated by the party of the second part, such test to consist of a full test of the pumping machinery in pumping out the dock, and the docking of such vessel as the party of the second part may direct; the emptying of the dock, the refilling of the dock, and the removal of such vessel, without any indication whatever of any defect,
31 weakness, or settlement, due to faulty material or workmanship, in said dock or either of its accessories, and the results of such test to be, in all respects, to the full and complete satisfaction and approval of the officers designated to superintend the same. Such test shall be made within thirty days after the contractors shall have notified the party of the second part of the completion of the dock, and a decision upon the question of acceptance made within twenty days thereafter; it being understood and agreed, nevertheless, that prior to the said test, the party of the second part shall, at their own expense, remove,

by dredging or other process, all obstructions of earth, clay, or other materials necessary to be removed in order to obtain free ingress for vessels to the entrance of said dry dock; said removal to be effected in sixty days from the date of removal of the front cofferdam, and notification thereof by the contractors that the said dam is removed, and that they (the contractors) are ready for the party of the second part to proceed and continue with the removal of the said obstructions.

"Eleventh. It is further mutually understood, covenanted, and agreed that in case of the failure or omission of the contractors, at any stage of the work prior to final completion, from any cause or causes other than those specified in the ninth clause of this contract, to go forward with the work and make satisfactory progress towards its completion within the prescribed period, it shall be optional with the Secretary of the Navy to declare this contract forfeited on the part of the contractors by giving notice in writing to that effect to them; and upon the giving of such notice, the contractors shall be indebted to the United States as for liquidated and ascertained damages in a sum equal to the aggregate of all advance payments made to them for or on account of the work done under the contract, and agree to refund the same on demand, within sixty days, and the United States shall hold as collateral for such refund the dock and its appurtenances, or such part or parts and materials as shall have been furnished. Such further steps shall then be taken towards the completion of the dock and its appurtenances, and the adjustment of the rights of the contractors and the Government thereunder, as are provided in the specifications forming a part of this contract.

"In case the said Secretary shall, under the provisions of this clause, declare this contract forfeited, such forfeiture shall not affect the right of the United States to recover for defaults which may have occurred hereunder, and as liquidated damages, a sum of money equal to the penalty of the bond accompanying the same: Provided, however, That if the contractors shall, by any of the clauses specified in the ninth clause of this contract, be prevented either from commencing or completing the work at the time agreed upon in this contract, such additional time may, in writing, be allowed them for such commencement or completion as, in the judgment of the Secretary of the Navy, shall be just and reasonable; but such allowance and extension shall in no manner affect the rights or obligations of the parties under this contract, but the same shall subsist, take effect, and be enforceable precisely as if the new date for such commencement or completion had been the date originally herein agreed upon.

"Twelfth. The covenants, conditions, and provisions relating to payments under this contract are hereby mutually understood and agreed upon by and between the respective parties as follows, that is to say:

"1. The contract price to be paid for the dry dock and its accessories and appurtenances to be constructed in accordance with this contract shall be four hundred and ninety-one thousand four hundred and sixty-five dollars ($491,465.00) United States currency.

32 "2. The amount of material provided and of work performed by the contractors, monthly, shall be taken as a basis for making payments under.

"3. The officer in charge shall, on or before the fifth day of each month during the progress of the work, prepare an estimate of the work done and materials furnished and delivered during the month preceding the first day of the month then current, according to the rates specified in the schedule aforesaid, and certify as to the amount properly payable thereunder, which estimate shall be submitted to the commandant of the station where such dock is in course of construction for his approval.

"4. When such estimates shall have been approved by the commandant as aforesaid, the respective amounts thereof, less ten per cent, shall be paid through the issuance and delivery to the contractors of bills in triplicate, duly certified by the officer in charge, and approved by said commandant and the Chief of the Bureau of Yards and Docks, and every such payment shall be deemed a payment on account of the aforesaid contract price: Provided, That no payment shall be made except as funds are available under appropriations made by Congress, for the construction of the work, from time to time.

"5. The reservation of ten per cent on each monthly payment as above provided for shall be held until this contract shall have been fully performed by or on the part of the parties of the first part, and the said dry dock, its accessories and appurtenances, shall have been finally accepted by the party of the second part; and no monthly or other payments shall be made under this contract, except upon approval by the officer in charge of all work done and material furnished at the rates specified in the schedule of prices up to the first of the month previous to the date of such payment, nor without satisfactory evidence, such as a county clerk's certificate, furnished by the contractors to said officer, that there are no existing liens other than that of the United States upon such work or materials at the date of such approval.

"6. When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled by and on the part of the contractors, they shall be entitled, within ten days after the filing and acceptance of their claim, to receive the said reserve, and any sum or sums not covered by the monthly estimates and payments, or so much thereof as they may be entitled to, on the execution of the final release to the United States, in such form as shall be approved by the Chief of the Bureau of Yards and Docks, of all claims of any kind or description under or by virtue of this contract.

"Thirteenth. It is hereby mutually and expressly covenanted and agreed, and this contract is upon the express condition, that no Member of or Delegate to Congress, officer of the Navy, or any person holding any office or appointment under the Navy Department, shall be admitted to any share or part of this contract, or to any benefits to arise therefrom; that this contract shall not, nor shall any interest therein, be transferred by the contractors to any other person or persons, and that any such transfer shall subject the contractors to a forfeiture of their rights hereunder, all right of action to recover for any breach of this contract being, however, reserved to the United States.

Fourteenth. It is expressly understood, covenanted, and agreed, by and between the parties to this contract, that if any doubts or disputes as to the meaning or requirements of anything in this contract, or if any

discrepancy appear between the aforesaid plans and specifications and this contract, the matter shall be at once referred for the consid-
33 eration and decision of the Chief of the Bureau of Yards and Docks, and his decision thereon shall be final, subject, however, to the right of the contractors to appeal from such decision to the Secretary of the Navy, who, in case of such appeal, shall be furnished by the contractors with a full and complete statement of the grounds of their appeal, in writing, and shall thereupon take such action in the premises as, in his judgment, the rights and interests of the respective parties to this contract shall require, and the parties of the first part hereby bind themselves and their heirs and assigns, and their personal and legal representatives, to abide by his, the said Secretary's, decision in the premises.

"In witness whereof the respective parties have hereunto set their hands and seals the day and year first above written.

"BYRON BARLOW AND COMPANY. [L. S.]
"BYRON BARLOW. [L. S.]
"JAS. E. BLACKWELL. [L. S.]
"J. M. DOUGAN. [L. S.]
"N. H. FARQUHAR, [L. S.]
"*Chief of Bureau of Yards and Docks.*"

II.

The following specifications were prepared at the Bureau of Yards and Docks of the Navy Department and were exhibited to bidders prior to the awarding of the contract, and are the specifications therein referred to:

"*Specifications for a dry dock for the United States Government.*

"*Location.*—This dry dock shall be located at the United States naval station, Puget Sound, Washington, upon a site shown on a plan accompanying these specifications.

"GENERAL CONDITIONS.

"*Materials.*—All materials are to be of good merchantable quality of the several kinds, where not otherwise specified.

"*Facilities.*—The station authorities are to allow the contractor proper space at the station for landing and storing materials to be used in the construction.

"After completion of the dock and before acceptance of the work by the Government, the contractor shall be required to remove the operating machinery, tools, surplus materials, etc., from the station.

"*Hours of work.*—The contractor shall not be restricted to the hours of labor established for Government employees, and shall be permitted to prosecute the work night and day, if desired, and on Sundays, if deemed necessary by the contractor for the protection of the work.

"*Patents.*—The use of all patented articles and methods employed in the construction of the dock is to be included in the contract without any additional charge or expense to the Government.

"*Intention.*—It is the declared intention and meaning of the contract

to obtain, complete, a substantial dry dock, according to the general plans and specifications, to the entire satisfaction of the Bureau of Yards and Docks. Should there be any omissions in the plans or specifications of any work or material required to secure this result, such work or material is to be regarded as embodied in the plans and specifications and to form a part of the contract.

34 "*Payments.*—The contractor shall submit a fair schedule of prices for materials delivered, materials worked and in place, and for excavation, etc., previous to the commencement of the work, which shall upon approval by the Bureau, govern during the construction of the dock. There shall also be submitted a classification of the cost, at the schedule prices, to aggregate the total contract price, under the following heads, viz:

"Plans, specifications, and superintendence.
"Cofferdams.
"Boiler house.
"Culverts.
"Filling, grading, puddling.
"Capstans, gypsies, etc.
"Pumping plan, complete.
"Pumping during construction.
"Caisson.
"Removal of cofferdam.
"Dry-dock structure proper.

"The amounts under the heads of Plans, etc., and Pumping during construction will be a sum per month, extending over the time from the beginning of the work in question until the time fixed in the contract for completion of the work, which the Bureau may reduce when in its opinion satisfactory progress is not being made, or the time for completion is extended.

"Previous to the first monthly estimate the engineer in charge shall make an estimate, upon the basis of the schedule of prices, of the probable cost of the entire work under the plans and specifications, and if it shall appear that such probable cost, at the prices specified, will exceed the contract price with reference to any item under the classification of prices, then there shall be such pro rata reduction in the said prices as may be necessary in order that the limit of expenditure, under any head of said classification, shall not be exceeded: Provided, That the above condition shall not operate to reduce the total contract price to be paid for the complete performance of the contract.

"Payments are to be made monthly upon bills duly certified, from which ten per cent will be reserved, to be paid on the full and final completion of the contract.

"No payments are to be made except upon materials delivered, materials worked in place, and work performed, at the rates in the schedule of prices.

"The prices for materials delivered shall represent, as nearly as possible, the actual cost of the same to the contractor, delivered on the site.

"*Miscellaneous.*—The contractor shall begin work within 60 days from the date of the notice to him that he is given possession and

occupancy of the site, and he shall progress therewith so as to complete his contract, in all respects, in thirty-six (36) calendar months from the expiration of the said sixty (60) days.

"All delays which the Bureau of Yards and Docks may find properly attributable to the Government or its authorized agents, and to have been delays affecting the final completion of the works, shall entitle the contractor to a corresponding extension of the time for completion: Provided, The contractor shall give to the engineer in charge immediate notice, in writing, of the cause of detention, and of the extent of time he claims to be thereby delayed.

"The whole of the works are to be executed in accordance
35 with the plans which are exhibited for proposals, and such other plans which may be supplied from time to time during the progress of the work, further illustrating the same.

"All work shown only in part on the drawings, or not fully described in the specifications, or in the proposal, and all details omitted, all of which are necessary to the complete and perfect construction, shall be considered as covered by this specification and the contract entered into for the construction of the dock.

"The works included in the contract will be carried out by the contractor, under the inspection and supervision of the civil engineer detailed for the purpose, who will inspect all materials and workmanship, and will have full authority to reject any which in his opinion are not in full accordance with the true spirit, intention, and meaning of the contract, plans, and specifications.

"The contractor shall be responsible for the entire line of works until completion, and acceptance by the Bureau of Yards and Docks. He is required to give his personal attention to the faithful prosecution of the work, and not to sublet or assign the same, but to keep it under his control, and in case of his absence, to have a duly qualified person to look after the works and to receive and follow directions relating thereto, given by the engineer in charge.

"The contractor shall furnish all necessary facilities, should it be deemed advisable by the engineer to make an examination of any work already completed. If the work is found defective in any respect, he shall defray all expenses of such examination and of satisfactory reconstruction. If the work is found perfect, such expenses will be allowed for.

"The contractor must furnish at his own expense all labor and materials necessary for the complete execution of his contract in the best manner.

"He will also assume all risk from storms, fire, floods, damage to persons and properties, and casualties of every description, and maintain the works at his own risk until their final acceptance, without additional compensation.

"Insurance in the amount of fifty thousand dollars shall be effected in such manner and in such companies as shall be approved by the Chief of the Bureau of Yards and Docks, which insurance shall be renewed from time to time at the expense of the contractor; the loss, if any, to be stated in the policies as payable to the United States, for whom it may concern.

"He is required to employ only competent and orderly persons, and will discharge from his employ any who are not so, upon the request of the engineer in charge.

"If, at any stage of the work, the contractor shall fail to go forward with the same, or to make satisfactory progress towards its completion within the specified time, from causes within his control as decided by the Chief of the Bureau of Yards and Docks, it shall be optional with the Secretary of the Navy to declare the contract forfeited on the part of the contractor. The contractor shall, upon receiving notice of such forfeiture, be indebted to the United States as for liquidated and ascertained damages in a sum equal to the aggregate of all advance payments made to him for or on account of work done under the contract, and agree to refund the same on demand, within sixty days, and that the United States shall hold as collateral for such refund, the dock and its appurtenances, or such part or parts as shall have been constructed or furnished. The Secretary of the Navy will thereupon appoint
36 a board of competent persons, which shall ascertain and declare a fair market value of all work done, and materials on hand, including a reasonable and customary margin of profit upon the work done satisfactorily.

"Upon the approval of the findings of said board by the Secretary of the Navy, he may proceed to complete the said dock and appurtenances in accordance with the contract, plans, and specifications, and the title to the dock and appurtenances, or such parts as shall have been completed, and all materials, shall forthwith vest in the United States, and the contractor shall surrender the same, together with the use of the works or plant, and all machinery, tools, and appliances theretofore used or necessary to be used in the completion of the work; any increase in cost incurred by reason of the failure of the contractor to be at the contractor's expense. If, however, any balance shall appear in favor of the contractor, it shall be paid to and accepted by him in full discharge of all claims under the contract.

"In case the completion of the dry dock, its accessories, and appurtenances shall be delayed beyond the said period of 36 calendar months, deductions of fifty dollars per day during the first three months following the expiration of said period, and of one hundred dollars per day for each and every day beyond the expiration of the said three months, may, in the discretion of the Secretary of the Navy, be made from the contract price of said dry dock; all such deductions to be made from time to time from any payment or payments falling due under the contract; provided, however, that such delays shall not have been caused by the act of the United States or its officers or agents, or by fire or water, or by any strike or stand-out of workmen employed in or about the work, or by other circumstances beyond the control of the contractor; and provided further, that in case of such alleged delay the contractor shall give immediate notice thereof to the Secretary of the Navy.

"In case any question shall arise under the contract concerning deductions from the contract price of said dry dock, such question, with all the facts relating thereto, shall be submitted to the Secretary of the Navy for consideration, and his decision thereon shall be conclusive and binding upon all the parties to the contract.

"All proposals must be in duplicate, upon forms provided for the purpose by the Bureau of Yards and Docks.

"Proposals must be signed by the bidder submitting them, with his usual signature in full. When a firm is a bidder, the member of the firm or agent who signs the firms name to the proposal shall state, in addition, the names of all the individuals comprising the firm. Any one signing the proposal as the agent of another, or of others, must file with it legal evidence of his authority so to do.

"The place of residence of every bidder must be given.

"Prices must be written in words as well as expressed in figures.

"If a bidder wishes to withdraw his proposal, he may do so before the time fixed for the opening, by stating his purpose in writing to the Chief of the Bureau of Yards and Docks, who holds it, and when his proposal is reached it shall be handed to him, or his authorized agent, unread.

"The bidder must satisfy the Government of his ability to furnish the materials and perform the work.

"Reasonable grounds for supposing that any bidder is interested in more than one bid will be cause for the rejection of all bids in which he is interested.

"The Government reserves the right to waive any informality, to reject the bid of any failing bidder or contractor, and to reject any or all bids as may be for its interests.

37 "No Member of or Delegate to Congress, nor any person belonging to or employed in the military, naval, or civil service of the United States, will be permitted to have any share in the contract for this work.

"The attention of bidders is invited to the acts of Congress which prohibit the importation or immigration of foreigners and aliens under contract or agreement to perform labor in the United States or Territories, or the District of Columbia.

"Each proposal must be accompanied by satisfactory surety or certified check, in the penal sum of $25,000, to the effect that the bidder will, within 15 days after the notice of the acceptance of his proposal, execute the required contract, and give a bond, with satisfactory surety, in a penal sum equal to twenty (20) per cent of the contract price, conditioned for the faithful performance of the contract.

"Bids received after the time of opening will not be considered.

GENERAL DESCRIPTION.

"The dry dock will be built of timber and concrete from the abutments inward, and the remainder, forming the entrance works, of concrete and stone masonry. The entire structure will be founded upon piles, as shown in the plans, unless during the progress of the work it is found better to substitute a mass of concrete for the piling under the floor. In the event that the Government decides to so modify the construction, the cost of the work as affected by it shall be determined and fixed by a board of civil engineers appointed for the purpose, upon a fair basis of prices, whose decision, upon approval by the Bureau of Yards and Docks, shall become binding.

"The engine, pump, and boiler house shall be one story, of brick with stone trimmings, and steel roof trusses covered with a slate roof.

"The culverts and pump well shall be of good hard-burned brick laid in cement mortar and concrete, as shown.

"The pumps, 3 in number, are to be of the centrifugal type, balanced, and driven by vertical high-pressure noncompound engines. The boilers are of steel, of the horizontal return tubular pattern, six in number.

"The caisson, a floating gate, is of boat form, constructed of steel, and fitted with engine, pump, and boiler.

"Tenders must be for the dry dock completed with pump well and culverts, caisson, pumps, boilers, and engines, with house, capstans, bollards, cofferdam, and other temporary works, and all parts of the works herein specified and any not enumerated which are necessary to render the dock complete.

"*Character and elevation of ground.*—Sections of the ground are shown by borings made upon the site by the Government, but it is desired that bidders make examinations for themselves, as the materials are very irregular in arrangement, and the Government does not guarantee that the borings made indicate the true character of the ground in the entire site. The levels show the general contour of the ground on the center line, but bidders are desired to make examination for themselves as to the amount of excavation and filling.

"*Mean high water.*—The mean high water referred to herein is that found by the tidal observations made at the station, and corresponds with 20 of the tide gauge, from which the bench mark is established.

"*Facilities for labor and materials.*—Persons intending to tender for this work are requested to visit and examine the locality and inform themselves in regard to materials and labor in the vicinity and the facilities for obtaining them.

38 "*General dimensions.*

Length on coping from head to outer end of table...	625 feet 3 inches.
Length on coping from head to outer gate.....	605 feet 9 inches.
Length on floor from head to inner abutment.....	529 feet 3 inches.
Width on coping at body	130 feet 1½ inches.
Width on coping at abutment.....	92 feet 7⅝ inches.
Width on floor in body	67 feet 1½ inches.
Depth from coping to mean high water.....	7 feet.
Depth from coping to floor in body	39 feet 3 inches.
Draught at mean high water over sill	30 feet.

"GENERAL CONSTRUCTION.

"*Excavation and grading.*—All earth excavated and not required for refilling or grading within the limits of structures is to be deposited within the limits of the station, at reasonable distances from the dock, where indicated by the commandant, not to exceed 1,000 feet from the dock, and brought up to the grade of the station as established.

"Materials dredged and deposited in scows may be disposed of by the contractor as he desires, provided no damage is done to the channel in

front of or leading to the station, and in accordance with the harbor regulations in relation thereto.

"Upon completion of the work the surface is to be evenly graded from coping back to the line of sheet piling and around the pump house, to correspond with the grade of the station adjoining, as the civil engineer or other officer in charge may direct.

"No excavation or dredging for the purpose of deepening the channel beyond the cofferdam of the dock shall be required of the contractors, unless for the removal of material deposited by them.

"*Piles.*—All piles are to be of Douglas fir, not less than twelve (12) inches in diameter at the butt and six (6) inches in diameter at the top, and of such lengths as may be required to drive to a firm bearing.

"All piles which are to be in contact with concrete or clay puddle must have the bark removed from such surfaces of contact.

"All piles in the bottom of the dock shall be accurately spaced and driven vertically until a satisfactory depth has been reached and the penetration is not more than one-quarter (¼) inch under the last blow of a hammer weighing three thousand (3,000) pounds, falling twenty-five (25) feet, or the equivalent thereof, unless the Bureau shall authorize a modification hereof after examinations and tests are made.

"All other piles shall be driven to a like firm bearing and until a penetration and a resistance are obtained which shall be to the satisfaction of the engineer in charge and in accordance with these specifications.

"Any piles broken or injured in driving shall be replaced.

"All piles are to be sound and straight.

"The spacing and number of the foundation piles, brace piles, crosscap piles, etc., shall be as shown on the drawings.

"Piles are to be shod with iron, if found necessary in the opinion of the engineer.

"No pile driving shall be accepted as satisfactory in the side construction work which does not secure a penetration of at least eighteen (18) feet, and if necessary the earth shall be first excavated sufficiently to give this limit of length when refilling is done.

"A less number than shown may be driven under the keelway if found impracticable to get all of them down to a satisfactory permanent bearing.

39 "Sheet piling is to be of sound Douglas fir, five (5) inches in thickness, about ten (10) inches wide, grooved and fitted with one and a quarter (1¼) inches by two (2) inches cedar tongues, and driven close, to depths shown or as required by the engineer in charge to make good work.

"At intersections of rows of sheet piling square piles twelve (12) inches by twelve (12) inches, properly grooved, are to be driven.

"The lines of sheet piling are to be as shown on the plans.

"The sheet piling in the bottom of the dock must be driven with special care to insure good and tight work, and to the depth shown, if possible.

"*Subdrains.*—After the piles in the dock bottom, inside the abutment floors, are driven and excavations made for the concrete, subdrains are to be made of two (2) inch plank, with inside dimensions of six (6) inches by six (6) inches, and laid both longitudinally and transversely in the positions shown. They are to be connected at all intersections.

The transverse subdrains are to be laid between every third and fourth transverse rows of piles. The longitudinal subdrains are to be laid between the longitudinal rows of piles where shown. The sides of the subdrains are to be perforated with three one and a half (1½) inch holes per lineal foot. All joints and intersections are to be well and carefully made. The longitudinal subdrains are to empty into the drains leading into the pump well and have flap valves at their outlets.

"The subdrains are to be filled around with small-sized broken stone or gravel. The concrete filling above is to entirely cover the subdrains.

"*Concrete.*—The heads of the foundation piles are to be surrounded by a continuous bed of concrete, three (3) feet least thickness, and extending up the sides in the body of the dock to the foot of the eighth altar, as shown.

"From the outer end of the table to the inner end of the inner abutment concrete of depths shown is to be laid.

"The bottom for a distance of six (6) feet beyond the table end is to be covered with a bed of concrete, sloped as shown.

"Drainage gutters three (3) feet wide, with a fall of twenty (20) inches toward tran'verse drain for under floor drainage, are to be formed as shown on the drawings.

"The concrete at tran'verse drain is to extend five (5) feet lower than in the body of the dock.

"All concrete is to be composed of one (1) part Portland cement, two (2) parts sand, and four (4) parts gravel, all by measure. It is believed that sufficient gravel of suitable size and quality can be obtained within the limits of the naval station. The contractor shall have the privilege of using from such of this gravel as the engineer in charge may decide to be in every way suitable. There may be substituted for it broken stone of approved quality, should the contractor prefer to furnish it. If, in the opinion of the engineer in charge, the gravel upon the station is not of proper quality to be used, to the exclusion of broken stone, then such proportions of gravel and broken stone shall be used as he may direct.

"The concrete shall be formed in the following manner: The sand and cement shall be thoroughly and evenly mixed dry on close platforms, after which water will be added untill the paste assumes a proper and uniform consisteney. This mortar will then be spread uniformly over the gravel, which shall have been previously thoroughly moistened and spread in an even layer upon the platform. The mass shall then be thoroughly mixed by being turned over three (3) times previous to being conveyed to the place of deposit.

"It shall be deposited in layers of not more than nine (9) inches in thickness, and thoroughly rammed until water appears upon the surface. The surface of each layer is to be thoroughly moistened before the succeeding layer is deposited upon it, and if it has been exposed long it must be dusted with neat cement after it has been watered.

"No concrete shall, under any circumstances, be deposited in place after it has commenced to set.

"When in place and rammed, all wheeling, working, or walking on it must be prevented until at least twelve hours after being deposited.

"All dirty or dusty stone or gravel is required to be screened or thoroughly washed before it can be used; otherwise it shall be rejected and must be removed from the work.

"The cement used must be Portland, with a tensile strength of not less than four hundred (400) pounds per square inch at the end of seven days, one (1) day in air and six (6) days in water. It must be delivered fresh and in good condition, and kept perfectly dry after delivery. It will be tested before use by the engineer in charge, kept dry, and blocked up if placed upon the ground.

"All concrete shall be mixed in the presence of an inspector, and the contractor or his agent shall give notice to the engineer when mixing is to be proceeded with. The engineer may reject any concrete mixed when such notice has not been given.

"*Stone masonry.*—The masonry of the dock is to be ashlar, in continuous courses of two feet rise, patent hammered on the face, six cuts to one inch, or sawed. If sawed, any roughness left by the saw must be removed by rubbing with grit or sandstone. Beds and joints are to be smoothly dressed to form ¼-inch joints. The whole is to be laid, bedded, and jointed in Portland cement mortar, made of one part of Portland cement and two parts clean, sharp sand, by measure; and all joints between the ashlar and the concrete backing are to be thoroughly filled with this mortar and grouted up at every course. The face joints are to be neatly pointed with Portland cement mortar made of one part Portland cement and one part clean, sharp sand, after being picked out to a depth of at least ½ inch; the mortar to be pressed well and securely into the joints and finished off with such tools as may be required.

"If the pointing is done in hot weather, shelter shall be provided to protect the masonry from the direct rays of the sun.

"The coping stones are to be not less than two feet in thickness, four feet wide, and not less than four feet in length, and are to have a smooth top surface. They are to be laid to break joints with the course below. The coping stones forming the top of the caisson meeting face must be of large size, accurately fitted, and secured by dowels. The coping stones are to be rounded on the upper edge to a radius of three inches.

"The meeting faces for the caisson formed by the quoins will be dressed perfectly true, so as to make perfectly water-tight joints with the caisson, and must be of the best quality of granite.

"There will be no joint in the angle where the seat and meeting face for the caisson meet, the stones being worked out to form the angle.

"Stones in the invert are to be cut and dressed to the full depth on planes at right angles to the surface of the intrados, unless otherwise shown.

"The ashlar must be of granite or sandstone, of quality approved by the engineer. All stones must be hard, clean, and free from seams and imperfections, and of good bed and build. They must be laid true on their natural beds, and without pinning.

"No masonry is to be laid on a concrete foundation until it has thoroughly set.

41 "The Portland cement must be of the same quality as that prescribed for use under the head of Concrete.

"The sand must be the best quality, clean and sharp.

"*Culverts.*—The culverts are to be constructed in accordance with the plans, of the best quality of concrete and sewer bricks. No soft bricks of any kind will be allowed.

"The brickwork will be laid in Portland cement mortar, made of one part Portland cement and three parts of clean, sharp sand. All joints will be thoroughly flushed, and the outer surface to be well cemented to prevent leakage.

"The Portland cement concrete to be of the same quality as that specified under the head of Concrete.

"The emptying culvert is to be of the cross section and length shown in the plans. It is to be constructed upon a foundation of Portland cement concrete of the dimensions shown, unless upon excavating it is found necessary to substitute a pile foundation, in which case it will rest upon the pile heads embedded in concrete. This culvert will be enlarged at the pump house to form a well, into which the suctions of the main and drainage pumps will enter.

"*Grating.*—Cast or wrought iron gratings are to be provided and set over the inlets to the emptying drain.

"*Dock floor.*—In the body of the dock the floor system will be formed as follows: Upon the piles, spaced as shown, will be fitted and secured longitudinal timber of Douglas fir, 12 x 12 inches. Upon these, running transversely, will be fitted and secured Douglas fir timbers, 14 x 16 inches, spaced as shown, generally four feet from center to center. Upon the transverse timbers the working floor of 3-inch Douglas fir will be laid with open joints. All of the traverse timbers are to be in one length.

"*Braces and cross caps.*—Brace timbers of Douglas fir, 10 x 14 inches, are to be secured to the tops of the piles driven in the sloping sides of the dock in the body with screw bolts, and bolted to the transverse timbers in the floor system and the cross caps, as shown.

"Cross-cap timbers of Douglas fir, 12 x 12 inches, will be fitted and bolted to the heads of the piles outside the coping on every transverse row.

"*Altars.*—Altar timbers of Douglas fir, of the form shown, are to be fitted and bolted to the brace timbers in the manner shown, forming altars of 11 inches rise and 9 inches tread, diminishing from the lower angles to the abutment.

"*Coping.*—A timber coping, of Douglas fir, formed of three timbers, arranged and bolted as shown, will be constructed and surround the body of the dock at the top of the altar system.

"*Diagonal ties.*—The tie timbers, 5 x 10 inches, shall be screw bolted to the cross caps, piles, and braces at every bent, as shown.

"*Slides.*—Slides for materials, from the coping to the floor, are to be constructed of oak, in the positions shown on the plans, the floor of the slide to be three inches thick.

"*Puddling.*—Clay puddle, of the best quality to be obtained in the vicinity, shall be thoroughly rammed down behind the altars, following closely the securing of the latter, in the best manner, and extending to a depth of at least two feet from the lower side of the braces, measured at right angles to the slope. The different layers shall be thoroughly incorporated. It shall be free from all surface soil, sods, roots, and stones.

"*Keel and bilge blocks.*—Keel blocks, bilge blocks, and bilge-
42 block slides are to be of oak. They will be spaced as shown on the plans, and properly fitted with racks, keys, pawls, slides, chains, etc., in the best manner.

"*Bollards.*—Twenty (20) bollards, or mooring piles, shall be supplied and fixed in place and surrounded by a bed of concrete flush with the grade, located as directed.

"*Capstans.*—The contractor shall furnish and set five (5) power capstans of proper size, to be set in a body of Portland cement concrete, with proper holding down bolts, located as directed.

"*Fastenings.*—All timbers, piles, planks, etc., shall be carefully fitted and secured in the very best manner to the satisfaction of the engineer, with the best quality of refined American iron bolts, spikes, etc., necessary to make strong and substantial connections.

"*Miscellaneous.*—The whole of the timber used in the dock works shall be of the best merchantable quality, sound and straight, free from shakes, splits, unsound knots, or any imperfections, and of the full lengths and dimensions either specified or required.

"The connection between the stone and concrete entrance work and the timber work in the body of the dock is to be made by means of an extension of the concrete in the abutments, and suitable iron tiebars, to embrace not less than three of the altar brace timbers. This work is to be thoroughly grouted, in addition, as the altars are laid up.

"*The boiler and pump house.*—The boiler and pump house shall be a brick structure, located as shown on the plans, and of the dimensions there stated. It will have stone trimmings. A brick chimney, of the dimensions shown, will be constructed and connected with the boiler plant as shown.

"The bricks are to be the best quality, red, hard burned, straight and uniform in size, and free from soft bricks.

"The best and most suitable are to be selected for the face work. The bricks in the house above the water table are to be well and solidly laid in mortar, made of fresh-burned lime and sand in the proportions of one of lime to three of sand, by measure. All brickwork below the top of the water table is to be laid in cement mortar composed of one part Portland cement and three parts sand. The brickwork of the chimney is to be laid in mortar composed of one part hydraulic cement and three parts of sand. The brickwork throughout is to be laid in the very best manner, all joints to be completely flushed and walls kept true. No part of the walls is to be carried up more than six feet in advance of the remainder, and when so carried up to be racked back. Bricks are to be clean and laid damp. Every fifth course is to be a heading course.

"The lime must be of the best quality afforded by the market in the vicinity of the works, freshly burnt lump, and must be slaked in a tight wooden box at least ten days before being used.

"The Portland cement must be of the same quality as that prescribed for use in the concrete.

"The hydraulic cement must be of the best quality, subject to test, and show a tensile strength of fifty (50) pounds per square inch on specimens set thirty (30) minutes in air and twenty-four (24) hours under water.

"The chimney will be lined for a height of fifty-four (54) feet with well-burnt fire bricks, of best quality, laid in best quality fire clay.

"The roof trusses will be of steel, of the form shown, and rest upon cast or wrought iron plates set for the purpose. The purlins will be of timber, secured as shown, and dressed. The sheathing to be of fir or
43 other suitable wood, as directed by the engineer, one and a half ($1\frac{1}{2}$) inches thick, and of the best quality; that portion over the engine room shall be not more than four (4) inches wide, tongued and grooved, closely laid, nailed to purlins, and dressed on the under side. It is to be laid on an angle, as directed, and properly oiled and shellacked. The portion over the boiler room is to be not more than eight (8) inches wide, tongued and grooved, dressed on under side, and painted. Upon this sheathing will be laid heavy roofing paper. The whole will be covered with the best quality of slate, of approved size, and uniform in color. Slates will be secured by galvanized nails, with a lap not less than three (3) inches. All flashing and counter flashing to be done with five (5) pound sheet lead. It will be capped with six (6) pound lead, fourteen (14) inches wide, clamped by galvanized iron clamps twelve (12) inches apart.

"The boiler room and engine rooms will have concrete floors, as shown, that in the engine room to have an elevated working floor covered with planks.

"The gallery in engine room is to be constructed according to the plans, having a wooden floor, iron-pipe railing, and iron stairway. The walls to be wainscoted four (4) feet in height from the gallery floor; the wainscoting to be of narrow selected wood, oiled and shellacked, to be finished with baseboard and rail. The remainder of the engine-room walls, above the gallery, is to be lathed and plastered, two coats well troweled.

"All the ironwork, and woodwork not otherwise specified, must be painted as directed by the engineer.

"Sashes will be one and three-quarter ($1\frac{3}{4}$) inches thick, hung in double box frames, all of No. 1 redwood, and glazed with double-thick American glass. Double doors will be two and one-quarter ($2\frac{1}{4}$) inches thick, and single doors one and three-quarter ($1\frac{3}{4}$) inches thick, all to be thoroughly framed, and made of No. 1 redwood. All hardware for doors, windows, ventilators, etc., must be of plain but substantial character, and approved of by the engineer.

"The gutters and down spouts are to be of copper, fourteen (14) ounces per square foot. Down spouts to be securely fastened to walls at intervals of about six (6) feet. All to be well locked, riveted, and soldered.

"The stone trimmings will be set in the walls where shown in the plan, and well and properly bedded in mortar. The beds and builds to be brought to plane surfaces, so as to make close joints. The exposed surfaces to be dressed six (6) cut.

"The entire building is to be erected complete in every respect, in the best manner, according to the general plan, notwithstanding any omissions in the drawings or specifications of any provisions necessary to secure this result."

III.

In compliance with the provisions of the seventh paragraph of the foregoing contract, and in manner and form as therein required, the following supplemental contracts were made from time to time during the progress of the work, the increased or diminished cost having been first ascertained and reduced to writing, as required by said seventh clause of the original contract, to wit:

On March 15, 1893, for the extension of the dock from 600 to 650 feet the sum of $23,771.32 additional being paid for the increased labor and material necessary to perform the same, and the time for the
44 completion of the contract extended for three and one-half months on account thereof.

On the 23d day of November, 1893, for the improvement in the strength and dryness of the pump room of the pump and boiler house, the sum of $6,982.20 additional being paid therefor.

On the 28th of December, 1893, for a change in the laying of the concrete immediately about and contiguous to the suction pipes of the drainage pumps in the pump room of the pump and boiler house, the sum of $17 additional being paid therefor.

On the 4th day of August, 1894, for the substitution of concrete for sheet piling along the sides of the floor and under the entrance works, and for the construction of wing walls to reenforce the transverse lines of the outer wall, etc., the sum of $16,000.27 being paid therefor.

On February 21, 1895, for increased facilities for cleaning out the back connections of the boilers to be erected in the boiler room of the pump and boiler house, the sum of $18 additional being paid therefor.

On the 28th of February, 1895, for additional protection to the outer end of the brick discharge culvert, the sum of $115 additional being paid therefor.

On the 24th day of August, 1895, to provide a means of draining the bottom of the pump house, the sum of $119 additional being paid therefor.

On the 30th day of September, 1895, to provide a means for protecting the top of the Bollard piles, the sum of $100 additional being paid therefor.

On the 11th day of November, 1895, for the placing of 1 inch of plaster on the walls of the upper floor to the bottom of the pump house, the sum of $410 additional being paid therefor.

On the 20th day of August, 1896, for the omission of the cast-iron grating on the floor of the pump house, the sum of $200 being deducted from the contract price on account of such omission.

Except as stated in this finding, no other or different contract or agreement was ever made concerning any work, labor, material, construction, or design in connection with this dry dock.

IV.

At the inception of the building of this dock certain standstone, known as Tenino sandstone, was submitted by the contractors to the defendants' civil engineer in charge of said work, and was by said engineer accepted as a suitable and proper stone for use in said dry dock, under that clause

of the specifications that "the ashlar must be of granite or sandstone of quality approved by the engineer." The claimants had submitted two such bids. The first of these, based on the use of sandstone, was much the lower and was accepted.

From the beginning of work under the contract until the 29th of August, 1894, when a large portion of the same had been completed, U. S. G. White, civil engineer, United States Navy, was the engineer in charge of the work on behalf of the Government. Shortly after the inception of work the claimants tendered to him a sample of sandstone which they stated they proposed to use in the ashlar of the dry dock. They at the same time offered to exhibit to said engineer the quarry from which said stone was taken. In pursuance of this offer said engineer, early in the spring of 1893, visited said quarry, which was situated at Tenino, in the State of Washington, in order to inspect the same and to learn therefrom whether its stone was suitable for use in the dry dock construction. He there found a quarry open from 300 to 400 feet along the ledge and faced about 40 feet in depth and equipped with proper appliances for taking the stone out and working it. He made a careful examination of the face and satisfied himself as to its uniformity and freedom from sand, mica, and clay pockets and pebbles or bowlders; noted the reaction of the stone under the channelers then in operation; visited the work where the stone was being sawed to dimensions, and noted the reaction under the saws; noted carefully the abrading power of the stone when used as a grindstone; took hand tools and tried the stone; examined unused blocks of the stone that had been exposed to the weather for a long time to detect any signs of disintegration or deterioration from such exposure; visited the boiler room of the works and examined the stone which was in use as lining to the furnaces under the boilers that supplied power for the works, and found no evidences of any breaking down or disintegration from the heat to which the stone had been and was being subjected; made numerous examinations with a glass magnifying 6 or 8 diameters, looking to the detection of any mica or other substances in its composition, and found none, the texture appearing uniform and good under the glass, and he subsequently made a test to determine the percentage of absorption.

As the result of this examination he approved the sandstone from the Tenino quarry and informed the claimants that the same would be accepted for all work under the contract.

Tenino sandstone had in fact been used as a lining in the fire box of the boilers at the Tenino quarry for some time; also in the piers of a bridge over the Chehalis River, on the Northern Pacific Railroad, where it was exposed to the action of salt water, and had been so for a number of years without deterioration, and had also been used with success in a number of buildings in western Washington and Portland, Oreg., some of them very high ones.

Shortly after this examination, to wit, on the 4th day of May, 1893, the claimants, relying upon the assurances thus given by the engineer that stone from the Tenino quarry was approved and would be accepted, entered into a contract with the owners of the quarry to furnish them from said quarry all of the sandstone required for the work.

Said contract is as follows:

Copy of contract with Tenino Stone Quarry Co.

This agreement made and entered into this 4th day of May, 1893, by and between the Tenino Stone Quarry Co., party of the first part, and Byron Barlow & Co., of Tacoma, Wash., parties of the second part,

Witnesseth, That the party of the first part covenants and agrees to furnish and deliver f. o. b. on wharf at the U. S. dry dock all of the sandstone required for the stone entrance of the U. S. dry dock, Puget Sound, Washington, according to drawings and schedules of courses, numbers, and sizes furnished by the parties of the second part, and which form a part of this contract, for the sum of forty (40 cts.) cents per cubic foot, and all of the stone for the boiler and pump house trimmings for the sum of fifty-five (55 cts.) cents per cubic foot.

It is further understood and agreed that the stone shall be Tenino bluestone of good, even, regular texture, of quality approved and acceptable to the civil engineer, U. S. Navy, in charge of construction, and that the stones shall be split or channeled to dimensions on two sides, as near as it is practicable to make them, and that the other sides and ends shall be channeled or split even and true so as to have not over 2″ projections to be cut off any squared size.

It is further covenanted and agreed that the delivery of the stone shall commence between April 15th and May 1st, 1893, and delivered from time to time as fast as needed by the parties of the second part, and the delivery completed on or before October 1st, 1893.

The parties of the second part covenant and agree to pay unto the party of the first part the sum of forty (40 cts.) cents per cubic foot for all stone for dock entrance and fifty-five (55 cts.) cents per cubic foot for all stone for boiler and pump house trimmings.

Payments of 90 per cent to be made monthly for all stone delivered the previous month upon acceptance, approval, and estimate of the civil engineer, U. S. Navy, in charge of construction, and as soon as payment is received therefor from the Government by the parties of the second part, and the remaining 10 per cent upon completion of the setting of the stonework and upon the approval and acceptance of the stone by the said civil engineer, U. S. Navy.

It is further covenanted and agreed that in case delay is caused to the parties of the second part on account of nondelivery of the stone, then the party of the first part shall pay to the parties of the second part the sum of twenty ($20\frac{00}{100}$) dollars per day for each and every day of such delay, and the parties of the second part shall have the right to retain in their hands, out of any money due to said party of the first part, a sufficient amount to cover the penalty for time delayed.

(Signed) TENINO STONE COMPANY.
By CHAS. A. BILLINGS.
GEO. N. VAN TINE.
S. W. FENTON.

BYRON BARLOW & CO.
BYRON BARLOW.
JAS. E. BLACKWELL.

46 Afterwards, and on the 28th day of June, 1893, they entered into a contract with Albert and Louis Beaudette, stonecutters, to cut the stones.

Thereafter a carload of stone was furnished by the owners of said quarry under their contract, which arrived at the site of the dock on or about the 20th of June, 1893. The amount of this stone, 2,377 cubic feet, at 65 cents per foot, $1,545.05, was included in the vouchers rendered by the claimants in the month of June, 1893, to which the following certificates were annexed:

"Having fully examined the labor and materials above charged, I certify that they are of good quality and in all respects in conformity with the written contract of date October 29, 1892.

"U. S. G. WHITE, *Civil Engineer, U. S. N.,*
"In ch'g of constr'n of dry dock."

"Received the above labor and materials in good order at Puget Sound Naval Station this 1st day July, 1893.

"U. S. G. WHITE, *Civil Engineer, U. S. N.,*
"In ch'ge of constr'n of dry dock."

"U. S. NAVY-YARD, PUGET SOUND NAVAL STATION,
"July 8th, 1893.

"Approved for the sum of fourteen thousand one hundred and thirty-one dollars and fifty-seven cents.

"JOHN C. MORONG, *Commandant."*

Said voucher was forwarded July 8, 1893, by the commandant at Puget Sound Naval Station, Lieut. Commander John C. Morong.

The item for stone was, however, stricken out of the voucher, at the Bureau of Yards and Docks, Navy Department, and the total amount of the voucher was thus reduced to the sum of $12,741.03.

This action of the Navy Department originated in the receipt by that Department of a communication from a labor organization, the Tacoma Trades Council, of the State of Washington, complaining of the quality of the stone.

The Department, upon receipt of this complaint, called upon the commandant of the Puget Sound Naval Station for a report on the quality of said stone. He in turn called for a report from the engineer in charge, who reported favorably on the quality of said stone, accompanying his report with letters from the chief engineer of the Northern Pacific Railroad and others acquainted with the use of said stone, and his report was adopted as his own by the commandant of the Puget Sound Naval Station and was forwarded to the Navy Department.

On the 14th of June, 1893, the claimants addressed the following letter to the commandant of the Puget Sound Naval Station:

"PORT ORCHARD, WASHINGTON, *June 14, 1893.*

"Lieut. Commander J. C. MORONG, U. S. N.,
"Commandant Puget Sound Naval Station, Washington.

"SIR: It having come to our knowledge that statements have been made against the use of Tenino sandstone in the entrance of the U. S. dry dock, we beg leave to submit the following:

"The questions to be considered in connection with selecting stone for

the dry dock are strength, durability, and dimensions, or sizes, of stones which can be obtained for the purposes intended.

"There can be no question to any unprejudiced, competent authority as to the strength being sufficient for the purpose in view.

"The extreme height of stonework resting on top of another stone is 39′ 6″, multiplied by the weight per cubic foot, 150 lbs. = 5,925 lbs. on square foot of stone. While there has been to our knowledge no authentic test of the crushing strength of Tenino sandstone, yet the strength of the weakest sandstone ever tested is 2,200 lbs. per square inch, and of common brickwork 500 to 1,000 lbs. per square inch.

"In our judgment the Tenino stone is similar in texture and strength to the well-known Amherst, Ohio, sandstone, which stands a test of 5,000 lbs. per sq. inch, but taking the strength of the lowest known, 2,000 lbs. per sq. in., × 144 sq. in. = 316,800 lbs. per square foot of strength, against a load of only 5,925 lbs. per square foot.

"*Durability.*—There has been no stone on this coast used long enough to state what its durability is. The Tenino stone has been used from 6 to 8 years, and in not one instance has it shown any deterioration from the action of the elements or from fire, and it is a well-known, indisputable fact that the stone hardens with age; besides anyone can see now for themselves where the Tenino stone has been in use for 18 months as a lining for the fire box for the boilers of the Tenino company instead of fire brick, and in not one place could we discover any cracks or disintegration from the heat.

47 "We know of no stone on this coast having been used in contact with salt water, and we have as good reason to think Tenino stone will withstand such action as well as any other untried stone.

"*Dimensions.*—The very large sizes of the stones for the dock entrance are very hard and expensive to get in any quarry, and in our examination of quarries the Tenino is the only one we felt any assurance that the sizes required could be obtained, or the quantity within the time needed.

"We feel sure that the charges against us and this stone are prompted by that spirit of boycotting now being resorted to so frequently by labor unions.

"The Seattle Stone Cutters' Association has repeatedly written us, telling us of their having enlarged the Seattle district in order to include the dry dock, and what prices and rules would govern here. We have not replied to such letters because we believe that we have a right, so long as we obey the laws of the land, to manage our own business to suit ourselves, and we do not think any association of men, outside of a legislative body, has any right or power to make rules to hamper or injure our business.

"The Tenino Stone Co. has received two blank contracts to sign, pledging themselves to sell no stone to contractors who would employ anyone except union stonecutters, which they refused to sign, hence these charges against the stone.

"Very respectfully,

"BYRON BARLOW & Co."

The Chief of the Bureau of Yards and Docks, on the 30th of June, 1893, wrote as follows to the commandant of the Puget Sound Naval Station:

"BUREAU OF YARDS AND DOCKS, NAVY DEPARTMENT,
"*Washington, D. C., June 30, 1893.*

"*To the Commandant, Puget Sound Naval Station, Washington:*

"SIR: * * * The Bureau desires to say now, however, that the selection of the quarries from which the stone is to be obtained can not be made by the contractors to restrict the Government officers to the acceptance of any sandstone of which they do not approve.

"Under the specifications the stone must be of quality approved by the engineer without regard to locality, and the contractor must select or open a quarry to furnish stone which will meet with such approval.

"If the contractor has exercised any other supposed right of selection under the contract, limiting the approval of the engineer to a sandstone from a particular quarry, it is one to which he is not entitled, and by which the engineer was not bound.

"The Bureau thinks that the sandstone for the dock should be one of the best to be obtained.

"In the further consideration of the matter the Bureau desires that it may be understood that it decides the contract and specifications to give to the engineer the decision as to the standard of quality, and he is fully authorized thereunder to fix upon the quality of sandstone he requires, by sample or otherwise, and require material equal to it.

"Very respectfully,

"N. H. FARQUHAR,
"*Chief of Bureau.*"

48 On the 21st of August, 1893, the claimants addressed the following letter to the engineer in charge:

"PORT ORCHARD, WASHINGTON,
August 21, 1893.

"Mr. U. S. G. WHITE,
"*Civil Engineer, U. S. Navy,*
"*In Charge Construction U. S. Dry Dock,*
"*Puget Sound Naval Station, Washington.*

"SIR: We enclose herewith our bill for sandstone, the payment of which has been neglected by the Government for two months.

"We have heard unofficially that there was some question about the acceptance of this stone (Tenino sandstone) by the Navy Department.

"We have had such confidence that this stone would finally be accepted that we have thought best not to annoy the Bureau for an immediate decision; but this has been hanging fire now for two months, and we think we are justified in demanding payment for same for the following reasons:

"Neither in the specifications or contract do we find any authority for the Bureau to pass any opinion on the quality of materials, except by the civil engineer.

"Paragraph 13 of page 5 of the specifications reads: 'The ashlar must be of granite or sandstone of quality approved by the engineer.'

"This clearly leaves the question of acceptance solely with the engineer in charge. Our bid accepted was for sandstone, which establishes the fact that the ashlar must be sandstone, approved by the engineer. To make sure that this stone was suitable, both as to quality and quantity

required, we had the engineer visit the quarry with us, and the stone was accepted by him.

"The specification makes the engineer the agent of the Government in this matter, and it is a well-known fact in common law that the agent binds the principal whether the Bureau sees fit to disapprove of the action of the engineer (its agent) and condemn the stone or not. This stone which has been delivered we claim is accepted by the Government and must be paid for. We make the bold assertion most positively that there is no other quarry in the State which can furnish the sandstone of the quality required and of the sizes shown on drawings, and there is no other quarry having the facilities, machinery, derricks, &c., capable of quarrying stones the sizes required.

"We think it also a great hardship, in view of the great stringency in money, both to us as well as the quarrymen, to withhold this payment so long solely on the complaint of stonecutters, disgruntled because we would not let them dictate terms, wages, etc., to us—in fact, let them run our business.

"It is also a great hardship to the stonecutters we have engaged, who have now been waiting here two months at expense, ready to begin cutting stone which is on the ground.

"The action of the Bureau will also delay us in finishing our contract within the time specified, and we now give notice we shall claim this delay.

"We desire also to inform you that the quarry has gotten out most of the stone required for the dock, and demands that we receive the same as provided in our contract with them; also that they will claim payment for said stone.

"We therefore must insist on immediate payment for said stone, and the Bureau's decision as to the remaining stone.

"Very respectfully,

"BYRON BARLOW & CO."

49 "AUG. 21.

"*N. H. Farquhar, Chief of Bureau of Yards and Docks, Navy Dept., to Byron Barlow & Co., Dr.*

"June 20. To 2,377 cubic ft. sandstone, at 65c ..... $1,545.05"

On the 31st day of August, 1893, the Chief of the Bureau of Yards and Docks announced by letter to the commandant of the Puget Sound Naval Station that the Tenino stone would not be accepted as material for construction, and on the 8th of September, 1893, the engineer in charge notified the claimants of this decision.

V.

On the 9th of September, 1893, the claimants wrote as follows to said engineer:

"PORT ORCHARD, WASHINGTON, *Sept. 9, 1893.*

"Mr. U. S. G. WHITE,

"*Civil Engineer, U. S. Navy,*

"*In Chg. Construction Puget Sound Dry Dock.*

"DEAR SIR: We beg leave to acknowledge the receipt of your letter of the 8th inst., notifying us of the rejection by the Bureau of Yards

and Docks of the Tenino sandstone offered by us to be used in the construction of the dock. In this connection, we beg leave to ask if you have had any official instructions to govern you in the inspection and approval of materials to be used in the construction—especially the stone—other than those contained in the specifications and contract.

"Very respectfully,

"BYRON BARLOW & CO."

Upon being notified by the Navy Department that the Tenino sandstone would not be accepted, the claimants—protesting against such requirement—offered stone from Sucia Island and also from Dog Fish Point, which was accepted and used in the construction of the dock.

Upon their tendering such stone to the civil engineer in charge, he wrote them under date of March 29, 1894:

"Messrs. BYRON BARLOW & CO.,

"*Charleston, Washington.*

"GENTLEMEN: The receipt of your favor of yesterday is acknowledged, and in reply would say that the stones referred to therein, having been approved by the Bureau, will be accepted by me, subject to inspection under such specifications as I may be furnished with by the Bureau.

"2. The specifications forming a part of your contract being of no effect under existing circumstances, I have asked for such specifications as will doubtless be furnished therewith before any stone will be delivered here.

"Very respectfully,

"U. S. G. WHITE,

"*Civil Engineer, U. S. Navy, in Charge of Construction.*"

VI.

When the attention of the Bureau of Yards and Docks was called to the alleged unfitness of this stone for the purposes required, the Navy Department, through the Chief of the Bureau of Yards and Docks, instituted an examination and inquiry for the purpose of determining the chemical ingredients, geological formation, the tensile
50 strength, the porosity, the crushing strength, and the absorbent qualities of the said Tenino sandstone, and to this end a number of experiments, tests, and observations were had at the bureau of medicine and hygiene at the Watertown Arsenal and at other scientific places by officers in charge of scientific institutions and persons skilled and learned in their respective professions, with the result that said Navy Department, through the Chief of the Bureau of Yards and Docks, reached the conclusion that said Tenino sandstone was not fit and suitable for the purposes to which it was proposed to use said stone; that said stone did not fulfill the requirements of the contract and specifications as above recited; that it was not a hard stone, nor a clean stone, nor free from imperfections; that its absorbent qualities were too high; that its crushing strength was too low, and that it was in many essential particulars totally unfit and unsuitable and undesirable for the use in the ashlar of this dry dock; and thereupon, to wit, on the 29th day of August, 1894, the contractors were notified of this decision of the Bureau

of Yards and Docks and were required to furnish other and better sandstone. From this decision of the Chief of the Bureau of Yards and Docks the claimants appealed to the Secretary of the Navy, who concurred in the opinion of the said Chief of the Bureau of Yards and Docks, and concurred in his order requiring a different and better sandstone. The tests and analyses of said Tenino sandstone were made from samples furnished to the Bureau of Yards and Docks by the contractors and by the commandant of the Puget Sound station. The delay in arriving at the ultimate determination to require a better quality of sandstone, which was reached on the 24th of August, 1894, was partly caused by the fact that the claimants were in correspondence with the Secretary of the Navy in an endeavor to persuade him to accept said Tenino sandstone. The tests and analyses of said stone, as above recited, were made promptly.

VII.

The amount of Tenino sandstone quarried, cut, and delivered was 2,349 cubic feet, amounting, at 65 cents a cubic foot, to $1,526.85.

The claimants had also, before receiving notice of the rejection of the Tenino sandstone by the Bureau of Yards and Docks, caused to be quarried and cut, but not transported, 7,280 cubic feet, amounting, at 65 cents a foot, less the cost of transportation, 10½ cents a foot, 54½ cents a foot, to $3,967.60, making a total for stone actually quarried and cut, and part of which was delivered, of $5,494.45. That sum, however, has not been paid by the claimants to the owners of the said Tenino stone quarry, nor does it appear that any action or suit has ever been brought against the said claimants for said sum of money.

The total amount expended by the claimants for furnishing, delivering, and cutting the stone which actually went into the construction of said dry dock from Sucia Island and Dog Fish Point, as aforesaid, was $33,556.23.

If they had been allowed to furnish Tenino stone they could have done so at a cost of $17,948.80. The additional cost, therefore, to the claimants of furnishing the stone which they did furnish, over and above what it would have cost them to furnish the Tenino stone, is the difference between the two sums last named, amounting to $15,607.43.

VIII.

The plans for the foundations of the boilers and boiler house were submitted to the civil engineer in charge of the work and approved by him, and the work was then done on said foundations in accordance
51 with the directions of said engineer. The foundation for the boiler house was completed and accepted by said engineer and included in his monthly estimate and paid for. The foundations for the boilers were made in accordance with the drawings so submitted to said engineer, and were completely laid at about the time the engineer first in charge of said work was detached therefrom. Subsequently another engineer was placed in charge of the work. In his opinion the foundations were imperfect and insecure because of defective construction on the part of the claimants and he required that they be relaid. The

claimants, protesting that it was not competent to require them to change the foundations after they had laid the same to the acceptance of the engineer in charge at the time of the original construction, relaid the same in accordance with the direction of the engineer thus subsequently in charge. The matter was subsequently referred to the Chief of the Bureau of Yards and Docks, and he decided that the work was required to be done by the terms of the contract. It does not appear that the claimants appealed to the Chief of the Bureau before doing the work, or that it was ordered by him.

The total additional cost of said work to the claimants was—

For the extra foundations for the boiler house.....	$312.12
And for the extra foundations for the boilers.....	384.56
Making a total of.....	696.68

IX.

In the execution of the contract the claimants drove a line of sheet piling transversely across the brick discharge culvert at the end of the brick work. They then went on and drove the round piling forming the foundations for the brick work of the discharge culvert. In cutting off this round piling, however, they made a mistake and cut the piling off 32 inches below the point where it should have been. As soon as this error was discovered they reported it to the engineer, and suggested two methods of remedying the mistake. One was to start the brick work 32 inches lower than it was originally shown, and to carry up the excess of height of 32 inches in brick work. The other remedy was to build up with timbers on top of the piles according to the height where they had been cut off too low, and then start the brick work on top of the additional 32 inches of timber work. The Department accepted the latter plan and also required that they put in a concrete toe to prevent the teredo from attacking the sheet piling and timber work. The claimants put in the timber work as required, and made no charge for the same. They also put in a concrete toe, as required by the Navy Department. This concrete toe had no relation to the error which had been made in the original construction of the sheet piling, but would have been required irrespectively of any such error having been made. The additional cost to the contractors amounted to $59.35.

X.

In refilling the dirt after the altars were in place no part of the filling was rammed or sluiced except the clay puddling. This was in accordance with the instructions of the engineer in charge of the work. The claimants discussed the matter with him, and he informed them that it was not required to be rammed or sluiced. He embraced the work done in that way in his monthly estimates, and the claimants received
52 payment for a large portion of the work done in that way at the contract rate of "Filling and grading per cubic yard, 30 cents." In the latter part of August, 1894, however, there was a change in the office of engineer in charge of the work for the United States. The new

engineer then placed in charge required the claimants to ram or sluice all back fillings. The claimants protested, insisting that the contract did not require anything more than depositing the material and evenly grading the surface to correspond with the grade of the station. The new engineer, however, required all the work to be thoroughly sluiced with water, and all but a small part thoroughly rammed, and the claimants did the work in that way under protest.

The additional cost to the claimants of doing this work, over and above what would have been required had they not been required to ram or sluice the same, would be 10 cents a yard, making, for 37,227 yards, $3,722.70. The engineer who ordered the work to be done in the manner stated referred the question of so requiring it at the request of the claimants to the Chief of the Bureau of Yards and Docks, and the latter informed said engineer that the Department approved his requirement, for the reason, as shown by the Bureau, that the contract plainly required it.

XI.

During the progress of this work it was discovered that the soil at the bottom of the dock was of a very tenacious and unyielding character, so as to be difficult of penetration for piles driven by the ordinary drop-hammer process, and was so reported by the contractors. On the 15th of February, 1894, it was stated that the round piles which were then being driven penetrated to a depth of from 8 to 10 feet. It was stated by the Bureau of Yards and Docks, on February 27, 1894, in answer to this statement, that while round piles penetrating from 8 to 10 feet, as now stated, may be satisfactory, depending upon the resistance shown by the first blow, yet the Bureau thought that these piles should be driven to a depth of 15 feet below the bottom of the excavation, if possible. A copy of this letter was furnished to the contractors, but when the report for piles driven in February was received it was found that the average of 76 piles driven on the 15th of February was 5 feet 0.77 inch, none going to 8 feet, and of the 57 piles driven on the 16th the average was 5 feet 0.60 inch, none going to 8 feet; and the average depth of the 891 piles driven in February was only 6 feet 0.82 inch. The general average for February was much reduced by the piles driven in the latter half of the month, after the attention of the contractors, as well as the civil engineer, had been called to the unsatisfactory depth reached by these piles. This report called forth from the Bureau other letters in March and April urging that the piles be driven to a greater depth and reiterating the instructions contained in the Bureau's letter of February 27. There was no claim made at this time by the contractors that they could not reach a greater depth than that hitherto reported. Thereupon the Bureau telegraphed definite instructions on the 13th of April to accept no piles driven to a less depth than 15 feet. The contractors made no attempt to show that they could not drive piles to that depth or to a greater depth than had been obtained, but employed experts to give an opinion after tests upon the piles driven to show that the Bureau was wrong. In view of these facts, the Secretary of the Navy, on the 21st day of May, 1894, and upon the occasion of a visit to said dock by that official, verbally authorized and directed the contractors to sink

the piles by a method known as the water-jet system; that is to say, by forcing water into the ground by means of a sink pipe operated by the hydraulic system, thus forming a hole into which the pile is set.

53 The contractors objected to and protested against this method of driving the piles upon the ground that it destroyed and weakened the bottom of the pit, and subsequently a board of naval experts was convened for the purpose of reporting upon the advisability of sinking the piles by this system. The board reported adversely to this system, and recommended that the piles be driven in accordance with the provisions of the contract and by the ordinary drop-hammer process, the piles to be driven to a minimum of 6 feet. The remaining 696 piles, which were driven after this report by the drop-hammer process, reached an average depth of 10 feet 4 inches. The aforesaid board of naval experts, under the direction of the Secretary of the Navy, passed upon the expense to which the contractors had been put on account of this verbal order of the Secretary of the Navy to the contractors, requiring them to sink said piles by said water-jet system, and recommended an allowance to said contractors therefor in the sum of $1,156.76. The amount thus recommended by this board of engineers was approved by the Secretary of the Navy and a voucher therefor was drawn, but when the same came before the Auditor for the Navy Department for audit and before the Comptroller of the Treasury for payment, it was refused, upon the ground that the services required were not extra and additional, but that they were such as the contract contemplated, and upon the further ground that the Secretary of the Navy, under the specific requirements of section 7 of the original contract, had no power or authority to authorize or direct the incurring of this expense unless the cost of the same was first ascertained by a board of officers provided for that purpose before the expense was incurred, and reduced to writing, as required by the seventh clause of the contract. Whereupon the Secretary of the Navy procured the reference of this item to this court under and pursuant to the provisions of Revised Statutes, section 1063.

The reasonable value of the work set forth and described in this finding is $1,156.76.

XII.

The delay incident to the experimentation with the water jet in driving piles, as stated in the last finding, extended from April 13, 1894, to July 5, 1894, a period of seventy days, exclusive of Sundays. The expense caused to the claimants by the defendants' officers in the suspension of the work was $2,625.

The board named in the last finding reported in regard to the claim for these expenses as follows:

"The board is of the opinion that the contractors are equitably entitled to a reasonable compensation for any additional expense incurred by them in the prosecution of the work in consequence of unusual delays that may be found to have been caused by the Government, but having no means of verifying the claim submitted for such additional compensation the board is unable to properly consider this question."

CONCLUSIONS OF LAW.

The court, upon the foregoing findings of fact, decides as conclusions of law.

I.

The claimants should recover upon the subject-matters set forth in Findings VII, IX, XI, and XII the sum of $24,942.99.

II.

The claimants should not recover upon the subject-matters set forth in Findings VIII and X.

54 VIII.—*Opinion of the court.*—Delivered May 21, 1900.

NOTT, Ch. J., delivered the opinion of the court:

The contract in this case, bearing date the 29th of October, 1892, provides "that if at any time it should be found advantageous or necessary to make any change or modification in the aforesaid plans and specifications, such changes or modifications must be agreed upon in writing." The parties acted under this provision no less than eleven times. There are eleven supplemental contracts, in one of which the trivial sum of $17 is the total consideration.

The defendants now contend that the claimants can not recover upon some of their causes of action because this provision of the contract was not complied with. It is manifest, however, that neither of the parties to the contract considered the provision as applicable to most of the matters now in issue. The Chief of the Bureau of Yards and Docks certainly did not. He did not seek to make any change or modification in the "aforesaid plans and specifications" which would involve additional expense. On the contrary, he regarded everything that was done under his direction and requirements as an obligation resting upon the contractors under the original contract. The one party maintained that the contractors were bound by the contract; the other party maintained that they were doing extra work or furnishing better material under requirements which were not contained in the contract.

The contract also provides that "no omission in the plans or specifications of any detail, object, or provision necessary to carry this contract into full and complete effect, in accordance with the true intent and meaning hereof, shall operate to the disadvantage of the United States, but the same shall be satisfactorily supplied, performed, and observed by the contractors. And all claims for extra compensation by reason of, or for, or on account of, such extra performance are hereby in consideration of the premises expressly waived."

To the court it seems plain that this provision applies only to "omissions," to matters of "detail," and only to such "omissions" and "matters of detail" as shall be "necessary to carry the contract into full and complete effect, in accordance with the true intent and meaning thereof." It can not be held, in the opinion of the court, that the things which the Chief of the Bureau compelled the contractors to do were "omissions" on "matters of detail," or "necessary" to carry the contract into

effect. On the contrary, they were clearly changes or additions which the Chief of the Bureau had or had not the right to require within the true intent and meaning of other provisions of the contract.

The contract also provides "that if any doubts or disputes arise as to the meaning or requirements of anything in this contract, or if any discrepancy occurs between the aforesaid plans and specifications and this contract, the matter shall be at once referred for the consideration and decision of the Chief of the Bureau of Yards and Docks, and his decision thereon shall be final, subject, however, to the right of the contractors to appeal from such decision to the Secretary of the Navy, who, in case of such appeal, shall be furnished by the contractors with a full and complete statement of the grounds of their appeal, in writing, and shall thereupon take such action in the premises as, in his judg-
55 ment, the rights and interests of the respective parties to this contract shall require, and the parties of the first part hereby bind themselves and their heirs and assigns, and their personal and legal representative, to abide by his, the said Secretary's decision in the premises."

But here it must be noted that this fourteenth provision of the contract is grounded upon "doubts and disputes," which are to be at once referred for the consideration of the Chief of the Bureau, whose decision is to be final unless appealed from to the Secretary. The doubts and disputes are manifestly those which might arise between the contractors and the engineer in charge. In other words, the contract provided that before the provision should become practically binding, it would be necessary that the engineer in charge, the Chief of the Bureau, and the Secretary of the Navy should all decide against the contractors, and that two of the three should be disinterested. As regards some of the matters in controversy there was no "doubt" or "dispute" on the part of the engineer in charge—his decision was on the side of the contractors—the controversy was begun by the Chief of the Bureau.

If the full intent and effect be given to this provision which the defendants now ascribe to it, the contractors might as well have written an agreement on half of a sheet of paper, binding themselves to perform whatever work and furnish whatever material the Chief of the Bureau might require, and accept therefor whatever remuneration the Secretary of the Treasury might be pleased to give them.

In Douglas's Case (2 C. Cls. R., 347), this court said "there are agreements to abide by the decision of a third person, reciprocally obligatory upon both the parties, which are always to be upheld—as an agreement that wagons to be manufactured shall be examined and approved by a certain inspector (Albert Brown's Case, 1 C. Cls. R., 307), or that the title to an estate to be conveyed shall be approved by the Attorney-General (Merchant's Exchange Company's Case, Ib. R., 332), but a decision under this contract by the referee, made after the contract has expired, and when the rights of the parties had become settled and fixed thereunder, can not preclude them from appealing to a court of justice. In Hurts v. Litchfield (39 N. Y. R.), where a contract provided that "in case any question arises under such contract in relation to the work, both as to value of work added or deducted, the same shall be adjusted by the architect," the court of appeals held that the provision was not

binding, being against the policy of the common law and having a tendency to exclude the jurisdiction of the courts, provided with ampler means to entertain and decide legal controversies." The court also said that such stipulations "do not deprive the party of his action, either at law or in equity to enforce his rights." Many cases are cited, English and American. The court of appeals recognized as valid such stipulations as have always been upheld in this court, cases "where an agreement makes the procurement of one architect's certificate a condition precedent to any right of action; then," says the court, "the rule is as claimed by the defendant in this case, but such is not the agreement between these parties."

In the many cases in which it has been held that where a contract provides that the architect or the engineer in charge shall determine the quantity or the fitness of the material or the sufficiency of the work his decision is ordinarily final, it has been the reference of a matter of fact to the arbitrament of a person peculiarly fitted by his own knowledge concerning the subject of dispute to determine a simple fact. But since the decision of the Supreme Court in Clark's Case (6 Wall. R.,
56 543) it has never been supposed that even the engineer's system of measurement was conclusive of the contractor's rights. Collins and Farwell (34 C. Cls. R., 294). In the cases of all building contracts there are matters to be determined as the work progresses. Some one must pass upon the fitness of the material, the sufficiency of the workmanship, the amount of work performed, etc. These are matters which can not be left until a building is completed; it is for the interest of both parties that they be settled as the work proceeds. The architect or engineer in charge being the person most familiar with the work and professionally fitted to pass upon such questions is ordinarily designated as the referee or arbitrator to determine them. Such agreements for such arbitraments must be upheld. But the agreement now under consideration is a very different thing. It goes far beyond anything that has come before the court since the case of Douglas, for it sets up the Secretary of the Navy, having no personal knowledge of the matter in dispute, as being in effect an appellate court of justice—the court of last resort. It in effect binds one party to abide as to every matter of fact, and as to every question of legal right, by the decision of the other party. Lord Coke said centuries ago that it becomes no man to be both judge and party in the same case.

Certain statutes have been interposed as a defense (Rev. Stat., secs. 3744, 3697, 3722, 3733). Some of these are mandatory; some merely directory. In Clark v. United States (95 U. S. R., 539) the Supreme Court held that the statute which requires contracts to be reduced to writing is mandatory, but at the same time expressly held that "where, however, a parol contract has been wholly or partly executed on one side, the party performing will be entitled to recover the fair value of his property or service as upon an implied contract for a quantum meruit." The Supreme Court also held about the same time that "the principal's which govern inquiries as to the conduct of individuals in respect to their contracts are equally applicable where the United States are a party," and that where an individual contractor would be liable for having ordered the suspension of the work, "the United States must answer

accordingly to the same rule." United States v. Smith (94 U. S. R., 214–217). In Semmes & Barbour (26 C. Cls. R., 119), sections 3679 and 3732 of the Revised Statutes were interposed as a defense, and there was also a statute relied upon which forbade contracts to be made for buildings "to be used for the purposes of the Government in the District of Columbia;" but the court held that these provisions of law "undoubtedly applied to express contracts," and "have no application to that class of implied contracts which arise from acts of public officers in the performance of their duties in carrying on the business of the Government." In many cases it has been held that though Congress may limit the expenditure to the amount appropriated, the contractor "is bound to know the condition of the appropriation account at the Treasury." (Myerle's Case, 33 C. Cls. R., 1, and cases cited.)

In the case now before us it was also supposed by the accounting officers that the provisions of the contract requiring new or additional work to be ordered in writing, bound the Secretary of the Navy, himself, and that he could neither order such work to be done in any other way than that provided by the contract, nor pay for it when it had been done.

As such provisions in contracts are constantly causing disputes and controversies, we now formulate the principles governing them, which we regard as well settled:

57 1. Where additional work or better material than the contract requires was ordered by a subordinate officer having no such authority, the compliance of the contractor must be regarded as voluntary service, and no contract can be implied, even though the defendants acquired a benefit by the change; that is to say, the Government can not thus be compelled to build a better building than was intended by its responsible contracting officer. (Driscoll's Case, 34 C. Cls. R., 508, and cases cited, p. 524.)

2. Where, on the contrary, the alterations or additions were ordered by an officer clothed with responsibility and authority to contract, a contract will be implied to the extent of the benefit which the defendants have received, and the claimant will recover in quantum meruit. (Hawkins v. United States, 96 U. S. R., 689.)

3. Where a contract expressly provides that alterations or additions must be ordered in writing, and the cost be agreed upon before the work be done, the principals to the contract in ordinary cases between individuals may waive the requirement; so in the case of Government contracts, the officer who has authority to order or agree in writing must be considered pro hac vice as the principal, and if he orders a change orally, and the contractor acts on the order and performs the extra work, the parties will be deemed to have mutually waived the requirement. (Ford's Case, 17 C. Cls. R., 75.)

In a few words, it may be said that the statutes and these contractual provisions must be construed for the protection of the Government and not for the embarrassment of contractors; and that they can not be used by public officers to cloak breaches of contract or justify improper interference with the work, or to acquire in any way an unfair advantage over the other party. It is for the interest of the Government that its good faith and business responsibility shall be upheld. A policy which

precludes legal redress will drive every prudent and responsible contractor out of the field of competition.

The principal item in controversy is for the sandstone of which the dock was constructed. The specifications, which are a part of the contract and upon which the claimants predicated their bid, provide: "The ashlar must be of granite or sandstone of quality approved by the engineer. All stone must be hard, clean, and free from seams and imperfections, and of good bed and build." Two bids were submitted by the claimants, one for granite and one for sandstone. The defendants' officers accepted the bid for sandstone. The claimants then tendered a sample of the stone and the engineer in charge examined it and visited the quarry from which it was taken. He made a careful examination and satisfied himself as to the quality of the stone, its uniformity, its freedom from sand and mica pockets, from pebbles and boulders; he noted the reaction of the stone under channelers then in operation; he visited the works where the stone was being sawed and noted the reaction under the saw; he examined unused blocks of stone which had been exposed to the weather for a long time, and he examined it in many other ways. After these tests and examinations the engineer approved the stone so tendered by the claimants, which was known as the "Tenino stone," and informed the claimants that it would be accepted for all work under the contract. The claimants thereupon proceeded to contract with the owners of the quarry for that stone, and the owners of the quarry proceeded to excavate and deliver stone. A carload was furnished and delivered at the site of the dock, consisting of 2,377 cubic feet, which was accepted by the engineer in charge and the usual voucher for payment given,
58 to wit: That it was "of good quality and in all respects in conformity with the written contract." The voucher was approved by the commandant of the navy-yard.

Before this voucher was paid an organization known as the "Tacoma Trades Council of the State of Washington" complained to the Navy Department of the bad quality of the stone. It is asserted by the claimants that this was a malicious act, in retaliation for the refusal of the claimants and the owners of the quarry to employ union labor. With this charge the court has nothing to do; the "Tacoma Trades Council" is not now on trial. But any person has a right to lodge a complaint with the proper authorities where there is a public work that is not being properly carried out, and the executive authorities in charge of the work would be wanting in vigilance if they did not look into the complaint.

In this case the Chief of the Bureau did examine the stone which the claimants furnished, and he caused tests to be made more or less satisfactory to himself; and he examined stone from other quarries, and he decided to reject the stone which the claimants had agreed to furnish, and compelled them to procure stone from another quarry, which he designated, at a greatly increased price. The claimants, after protesting and appealing to the Secretary of the Navy, who affirmed the decision of the Chief of the Bureau, complied with the requirement. They seek to recover the additional cost which they were subjected to by this action of the Department.

On the part of the defendants it is said that by the fourteenth paragraph of the contract the claimants bound themselves to abide in all cases

of doubts or disputes by the decision of the Chief of the Bureau, subject only to an appeal to the Secretary of the Navy, and that the contract also provided that the work to be done under it should be entirely satisfactory to the Chief of the Bureau. It is true that the Chief of the Bureau was the contracting officer, and it is true that it was his duty to secure a public work of the best character. It is also true that if he found that the work which had been done was not going to secure all that was needed or intended for the public welfare, it was his duty to have the work done over again. But it is also true that when he invited bids he described to the bidders the work which they should do and the materials which they should furnish, and among other things he told them that the stone which they should furnish should be subject to the approval of the engineer whom he might select to be the agent of the Government in charge of the work. He imposed no other condition. Furthermore, it is also true that he made that proposition a part of the contract, and that he allowed the engineer in charge to examine the quarry and select the stone, and notify the claimants that this stone was accepted and approved, who consequently, on the faith of the approval, proceeded to bind themselves to their subcontractors, the owners of the quarry, for the procurement of the stone, and he allowed the parties to proceed to excavate and prepare and deliver stone. Finally, it is also true that he, and not the engineer in charge, rejected the stone; and that he, and not the engineer in charge, selected the other stone which the claimants were required to furnish. In a word, he departed from the terms of the contract both positively and negatively by himself deciding a question which it was agreed another person should decide, and by not carrying out that which the engineer in charge (who was on the ground, and could give his personal investigation to the stone and the quarry from which it was taken, and the works and edifices in which it had been tested by actual use) had in effect been determined. To hold that the Chief of the Bureau
59 could do this would be to hold that he could tear the contract to pieces at any time during the performance of the work and require the work to be done according to a contract into which the parties had never entered. The Chief of the Bureau did right in making changes conducive to the public interest, but he could not make these changes at the cost of the other contracting party. On the 30th of June, 1893, he decided "that this sandstone for the dock should be out of the best to be obtained." That may have been a judicious and necessary decision, and it is not for the court to question it, but the best sandstone which could be obtained was not the stone prescribed by the contract.

The court does not intend to pass upon the issue whether the one stone was better than the other, or whether either or both were sufficient for the uses and purposes to which the stone might be put. It is incontrovertible that either the engineer in charge or the Chief of the Bureau was the person to determine this question, and the resulting question as to which was the proper person is one of law. In the absence of fraud, collusion, or gross mistake the decision of the proper arbitrator was final and conclusive. There is no fraud or collusion in the case, and the court is entirely satisfied that the engineer in charge acted with due care and caution, and that his decision was the exercise of his best judgment.

The contracts between the claimants and their subcontractors have

been brought into the case by both parties, and the defendants rely upon them as being to some extent a defense to the claimants' demand for damages.

But since the decision in the leading American case of Masterton v. Mayor of Brooklyn (7 Hill N. Y. R., 61), it has been held generally and also by this court that such subcontracts can not "be taken into the account, or become the subject-matter of consideration at all in settling the amount of damages to be recovered for a breach of the principal contract." The defendants certainly were not a party to them, and can neither be injured by them nor obtain an advantage from them. The rule for the measure of damages for breach of contract in such cases, where the contractor is not allowed to perform according to the terms of the contract, is too well settled to be either questioned or discussed.

The causes of action set forth in Findings VII, IX, XI, and XII are sufficient, in the opinion of the court, to entitle the claimants to recover. As to the causes of action set forth in Findings VIII and X, the court is of the opinion that the claimants should have submitted the requirements of the engineer in charge to the Chief of the Bureau before proceeding with the work. They were required to do so by the terms of the contract, and authority to compel them to do additional work was thereby reserved to the Chief of the Bureau.

The judgment of the court is that the claimants recover of the defendants $24,942.99.

60 IX. *Final judgment.*—Entered May 21, 1900.

At a Court of Claims held in the city of Washington, D. C., on the 21st day of May, A. D. 1900, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said Byron Barlow, James E. Blackwell, and James M. Dougan do have and recover of and from the United States the sum of twenty-four thousand nine hundred and forty-two dollars and ninety-nine cents ($24,942.99).

By the Court.

61 X. *Defendants' application for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 21st day of May, 1900, in favor of the claimants, the defendants, by their Attorney-General, on the 11th day of June, 1900, make application for, and give notice of, an appeal to the Supreme Court of the United States.

L. A. Pradt,
Assistant Attorney-General.

Filed and allowed in open court June 11, 1900.

62 XI. *Claimants' application for, and allowance of, cross-appeal.*

The United States having appealed from the judgment rendered in favor of these claimants on the 21st day of May, in the year 1900, for the sum of twenty-four thousand nine hundred and forty-two dollars and

ninety-nine cents ($24,942.99), now come the claimants, Byron Barlow, James E. Blackwell, and James M. Dougan, partners doing business under the firm name and style of Byron Barlow & Co., and hereby appeal to the Supreme Court of the United States from so much of said judgment as disallows the amounts stated in findings of fact VIII and X, as shown in conclusion of law 11.

GEORGE A. KING,
Attorney for Claimants.

Filed and allowed in open court June 11, 1900.

63 XII. In the Court of Claims.

BYRON BARLOW & Co.
vs.
THE UNITED STATES. } Nos. 20, 698, and 50, Department.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusions of law thereon, of the opinion of the court, of the judgment of the court, of the application of the defendants for and the allowance of an appeal to the Supreme Court of the United States, of the application of the claimants for and the allowance of a cross-appeal to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 17th day of July, 1900.

[SEAL.] ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

64 (Indorsement on cover:) File No. 17861. Court of Claims. Term No. 376. The United States, appellant, vs. Byron Barlow, James E. Blackwell, and James M. Dougan, partners, as Byron Barlow & Co. File No. 17862. Term No. 377. Byron Barlow, James E. Blackwell, and James M. Dougan, partners, as Byron Barlow & Co., appellants, vs. The United States. Filed August 4th, 1900.